

***United States Court of Appeals
for the Second Circuit***

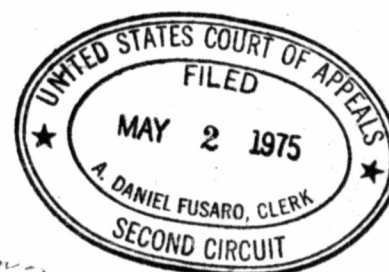


**SUPPLEMENTAL
BRIEF**

B

74-2639

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2 United States of America

3 vs.

74 Cr. 159

4 Philip Stoller and
5 Martin Frank

6 New York, New York.
7 October 10, 1974 - 9:30 A.M.

8 (Trial resumed.)

9 (In the robing room.)

10 THE COURT: Gentlemen, three things.

11 MR. SORKIN? Mr. Feldshuh is not here.

12 THE COURT: It is too bad, he is late. He won't
13 be aggrieved or his client. Mr. Feldshuh's absence should
14 be noted for the record. Is he five minutes late? The jury
15 is all in.

16 Number 2, Mrs. DeBartola, the forelady, suffered
17 a cruel blow that her nephew was killed in a fire yesterday
18 and the wake begins this afternoon or this evening, and
19 she wants to quit early. I think that is the lease she is
20 entitled to. I therefore plan to quit at 3:15 to accommo-
21 date Mrs. DeBartola unless one of you gentlemen have some
22 constitutional privilege which may be involved here.

23 If s let me know now.

24 Three, the jury has voted and resolved that they
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want to sit on Monday, October 14, 1974.

Let's march out and do our duty and we will bring
in the jury.

(In open court; jury present.)

THE COURT: Before we begin, Mrs. DeBartola,
and ladies and gentlemen, I have your message so we will
sit on October 14. You are most patient and helpful in
that regard.

Second of all, I am aware of the problem of one
of you and please be advised, Mrs. DeBartola, we will
suspend at 3:15 in order to accomodate your situation.

MRS. DeBARTOLA: 4:00 would be all right. It
doesn't matter.

THE COURT: I want to be sure. Maybe we will
run past 3:15, but we will be out early.

MRS. DeBARTOLA: Thank you, your Honor.

MR. SORKIN: May I proceed, your Honor?

THE COURT: I think we are all present, yes,
indeed.

J E R O M E R O B E R T A L L E N resumed.

CROSS-EXAMINATION (continued)

BY MR. SORKIN:

Q Mr. Allen, when did you first meet Mr. Bonavia?

A In the latter part of 1958 or perhaps early 1958.

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2 Q When did you say he opened up his account
3 at Bank Hofmann?

4 MR. GOULD: If your Honor please, I thought
5 this had been exhausted and already covered during cross
6 examination.

7 THE COURT: My recollection is that you got into
8 this the night before last, Mr. Sorkin.

9 MR. SORKIN: I really don't think I did with
10 respect to Mr. Bonavia.

11 THE COURT: If you will check the transcript
12 in the late afternoon of October 8, according to my notes,
13 it would appear that you did. I don't want to wrangle
14 with you, but that is what my notes show.

15 MR. SORKIN: I don't have the opportunity to
16 look through it, but I don't think I got into a specific
17 account.

18 THE COURT: I don't know what this is all about,
19 but I think you better go to the meat of it rather than re-
20 peat all of this because on the afternoon of the 8th Mr.
21 Alen stated in substance, and you asked him about his grand
22 jury testimony in this regard, the purchase of 5000 shares,
23 taking them to Zurich, and so on and so on, and he said that
24 all his testimony about that to the grand jury was false.
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MR. SORKIN: I understand. My question this morning was when Mr. Bonavia opened his account. I am not going back to that area. I would just like to know when Mr. Bonavia opened his account.

THE COURT: By this time I think it is better if we repeat. I don't know what you are getting at so we will have to take it on faith. Go ahead.

Q Whendid he open his account?

A You mean the Bonavia account or his Barbin account.

Q Both. Start with the Bonavia account.

A He told me he opened his first account around 1961- '62 with Dr. Walter Wirth. That would be the Joseph Bonavia account.

Q When did he opened his Barbin account?

A He told me he opened that either at Liberbaum in '64, '65 or perhaps a year or so later.

Q Did you give him any records to open either one of these accounts?

MR. GOULD: I think this specifically was covered, your Honor. I am looking for it in the transcript.

THE COURT: Somewhere I hope we are coming to some other point. I believe it was too, Mr. Sorkin. All of this seems to me preliminary.

MR. GOULD: I will withdraw the objection.

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2 THE COURT: It seems preliminary. I will ask
3 you, however, what is the point? Let's get to it.

4 Q Mr. Allen, did you give him any records to open
5 either one of his accounts?

6 MR. GOULD: I object to that. I suppose
7 counsel means forms to open the accounts.

8 THE COURT: I assume so.

9 THE WITNESS: I don't believe I did. I may
10 have in 1958 when I first met him. You are talking about
11 the Swiss account?

12 Q Correct.

13 A I thought you meant American -- I don't believe
14 I did. I may have.

15 Q Where did you obtain the records?

16 A I didn't say I gave him the records.

17 MR. GOULD: Objection.

18 THE COURT: There is a difference between
19 records and forms.

20 MR. SORKIN: I am talking about the forms.

21 THE COURT: Say forms.

22 Q Forms.

23 A I didn't say I gave him the forms.

24 Q Did you open any accounts for him at any American
25 brokerage firms?

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A What do you mean open?

Q Did you direct him to any brokerage houses so he may open an account there?

A Yes, I did.

Q What brokerage firms?

A I believe I told him to go or advised him to go to either Hirsch or perhaps Krolli, Dallan to open a commodity account.

Q Any others?

A I may have suggested some members in the New York Stock Exchange.

Q Such as?

A I am not sure whether I asked him to go to Deetjens or whether he asked me about them.

Q Mr. Allen, do you recall Mr. Gould asking you this question, Page 2456, Line 22:

"Q It has been claimed in this case, sir, by a witness, that Frank said at that meeting that the deal should have been done in a different way through the use of nominees or the deal should be done in a different way through the use of nominees and that he, Frank, wanted \$15,000 plus 1000 shares. Did anything like that take place?

"A No, sir."

Do you recall being asked that question and giving

1 that answer?

2 A Yes, sir.

3 Q Did Mr. Frank at any time tell you that he told
4 you how to do the deal on Training With the Pros?

5 MR. FELDSHUH: Objection, your Honor. This has
6 already long since been gone into. Objection as to form.

7 THE COURT: I understand.

8 (Question read.)

9 THE COURT: Mr. Sorkin, "Did Mr. Frank tell you,"
10 I don't understand that.

11 Q Mr. Allen, within the past year, see if I can
12 narrow it down, did Mr. Frank tell you --

13 MR. SORKIN: I think Mr. Gould has an objection.

14 MR. GOULD: I am signaling to the witness that
15 he shouldn't give us a quick answer.

16 THE COURT: I asked you to reframe a question.
17 Never mind Mr. Gould. We will take care of any problems
18 of his. You worry about your own.

19 Q Mr. Allen, within the past year did Mr. Frank
20 tell you that he, in fact, did tell you how to do the deal
21 and that he asked you for \$15,000 for telling you how to do
22 the deal on Training With the Pros?

23 MR. GOULD: I object to that, your Honor. It
24 must be apparent why. I don't want to state the reasons
25

1 before the jury. Again, I think counsel has to be ad-
2 monished with respect to this.
3

4 THE COURT: I am not sure I agree with you.

5 MR. GOULD: May we have a side bar conference?

6 THE COURT: The thing that is bothering me pre-
7 liminarily is the form of the question.

8 Since I don't understand your objection on this
9 one or the substance, you better come up.

10 (At the side bar.)

11 MR. GOULD: If the Court please, my objection
12 is based on the fact that there is a transparent attempt
13 to furnish a basis for the use of the tape in which there
14 is a reference to something like this. I thought it best
15 to nip it in the bud right now before we get into this any
16 further. If Mr. Sorkin can tell us what he is trying to
17 do we can deal with it.

18 MR. SORKIN: I will tell you. I think Mr.
19 Gould is correct in part. I do not intend to infringe upon
20 your Honor's rulings to offer that tape to impeach Mr. Allen.
21 However, I think we are entitled to ask Mr. Allen, since he
22 is under oath, if at any time Mr. Frank told him this because
23 on that tape, as Mr. Allen knows full well, Frank did
24 volunteer that statement that I got \$15,000. He should be
25 aware --

1 THE COURT: Wait a minute.

2
3 MR. GOULD: If that is all he is going to do that
4 is all right. What I am afraid of is opening up the door
5 to the other problem.

6 I would think if he simply asks that question
7 and he is bound by the answer and he doesn't go any further,
8 all right.

9 THE COURT: First of all, I quite understand the
10 defense' concern. But I understand your position too.
11 But again, Mr. Sorkin, as I have been trying to tell you for
12 days now you have on your mind one set of thoughts, but when
13 the words come out, believe me, they come out very differ-
14 ently.

15 Now I mean it, the form of that question that you
16 actually put is ambiguous on any number of counts, to begin
17 with, even from your own selfish point of view.

18 If you put it the way you just told us --

19 MR. GOULD: He has to rephrase it.

20 MR. FELDSHUH: There is a consent of the Govern-
21 ment on paragraph --

22 THE COURT: I don't understand you.

23 MR. FELDSHUH: In the indictment, in the second
24 count, the overt act was that he got \$15,000. Your Honor
25 struck and dismissed that.

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2 MR. GOULD: His Honor already mentioned
3 that.

4 THE COURT: I can't understand a word you are
5 saying.

6 MR. GOULD: May I add this: His question is
7 objectionable, I suggest, also as to form. He is within
8 his rights in asking, "Did he ever at any time." What
9 triggered me was the inclusion of the words "within the last
10 year." That is what bothered me.

11 THE COURT: Also may I say, Mr. Sorkin, if surmises
12 were left to control, and if I were in your shoes, I would
13 limit it to that anyhow.

14 MR. SORKIN: I didn't hear your Honor.

15 THE COURT: This is what baffles me. Don't
16 you understand that he may have said it on other occasions?
17 It doesn't mean because you are dealing with this tape that
18 it is the only time.

19 MR. SORKIN: Mr. Gould wants me to ask "Did he
20 ever at any time."

21 MR. GOULD: You don't understand us.

22 THE COURT: Please, Mr. Gould, you have made
23 yourself clear.

24 You have been told what to do. If you want to
25 do that, do it.

1. qb-11

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2 MR. FELDSHUH: Paragraph R was dismissed by
3 you.

4 THE COURT: That has nothing to do with what
5 I am talking about.

6 (In open court.)

7 Q Mr. Allen, did Mr. Frank at any time tell you that
8 he received \$15,000 for telling you how to do the Training
9 deal?

10 A No, sir, the 15 was a repayment of a loan.

11 Q I didn't ask you that. I ask you again, Mr.
12 Allen, did Mr. Frank at any time tell you that he received
13 \$15,000 for telling you how to do the Training deal?

14 A I don't recall a conversation like that.

15 MR. SORKIN: May we have this marked as
16 Government Exhibit 123, please.

17 (Government Exhibit 123 was marked for identi-
18 fication.)
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2 Q Mr. Allen, I do not want you to read this out
3 loud. I do not want you to even think out loud. I just want
4 you to look at this right here and I ask you if that refreshes
5 your recollection?

6 MR. GOULD: If your Honor please, I have the
7 following objections. Number 1, the witness has answered
8 the question and does not require that his recollection be
9 refreshed.

10 THE COURT: He said he did not recall it.

11 MR. GOULD: Any such conversation --

12 THE COURT: That is correct. Therefore, I
13 think the Government is entitled to show him something to
14 enable him to refresh his recollection if he can.

15 MR. GOULD: I also ask your Honor to observe
16 the document that has been shown --

17 THE COURT: I just did. That is what I was
18 doing.

19 MR. GOULD: Thank you.

20 THE COURT: That is why I was leaning over to
21 look over the witness' shoulder.

22 A I don't recall words to this effect.

23 THE COURT: Wait a minute. The question is
24 whether or not looking at that document, particularly the
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1 top sheet, it refreshes your recollection with respect to
2 this subject at all?

3 A To this subject in general, but not that state-
4 ment, your Honor.
5

6 THE COURT: Not that statement.

7 All right. Mrs. DeBartola, and ladies and gentle-
8 men, I am going to have to ask your indulgence to take a
9 brief recess. Counsel will remain here and the witness
10 will remain here. Mr. Turchin, would you please remain.

11 Thank you, ladies and gentlemen. I will try
12 to be as prompt as possible, about five or ten minutes.

13 (Jury absent.)

14 THE COURT: Now, with your lawyer Mr. Turchin
15 present in the courtroom, I believe it is my duty to advise
16 you that you are running the risk of being indicted in a
17 separate charge of perjury unless you reflect carefully on
18 what is involved here.

19 I would be glad to give you a few moments to con-
20 sult with Mr. Turchin who is here.

21 THE WITNESS: Yes, your Honor.

22 THE COURT: I really think you should. Mr. Turchin,
23 you ought to see this document. I think you probably
24 know what it is.

25 MR. TURCHIN: I have an idea. I am not sure, your

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Honor.

THE COURT: You ought to see it.

MR. SORKIN: I have an extra copy, your Honor.

THE COURT: I think you ought to consult with
your client before we go any further.

THE WITNESS: Yes, your Honor.

THE COURT: You step down and talk to Mr. Turchin.

(Pause.)

MR. FELDSHUH: Your Honor, may I put something
on the record, please?

THE COURT: Yes, sir.

MR. FELDSHUH: Your Honor, I respectfully
submit to your Honor that the thrust of this line of question-
ing violates the spirit, the substance of your Honor's
ruling with regard to the tapes. This piece of paper is
merely a transcript of what that tape contains.

THE COURT: That is correct.

MR. FELDSHUH: I also respectfully submit to
your Honor that under the law as your Honor enunciated this
entire episode concerning the tape or the transcript of the
tape has no place in this trial.

THE COURT: I didn't say that, Mr. Feldshuh.
There I don't agree with you. I didn't know we were coming
down to this event when I made that ruling, and that is an

outrageously naive statement to put it mildly from you.

You are putting words in my mouth and thoughts in my head that I didn't have for one obvious reason: I ruled these tapes out on quite different grounds than now present us. I didn't anticipate after the Government's case was over that Jerome Allen would appear as a witness. I didn't anticipate that he would say the things he said. How could I? Neither could you. You may have known he was coming as a witness. You couldn't be sure of what he is saying. This is quite a different problem, Mr. Feldshuh.

MR. FELDSHUH: I appreciate the fact, your Honor, that the point of the Government is to test the credibility of this witness. That may well be. But this case is so highly prejudicial that even that indirect method of bringing it to the attention --

THE COURT: Look, Mr. Feldshuh, when the choice was made by the defense to bring this man, all kinds of possibilities were inherent, not specifically or for certain, I agree. But there comes a time when the Court has to protect itself against fraud, for one thing.

Second of all, the Government can't be handcuffed entirely in these matters.

MR. FELDSHUH: Except, may it please the Court,

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1 in a situation where this thing is so fraught with danger
2 and suspicion from the point of view that the spillover
3 effect --
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5 THE COURT: Wait a minute. Wait a minute.
6 For one thing, nothing has happened yet. The jury was ex-
7 cused by me for one of a number of reasons. That one is
8 just what you are talking about. I don't know which way
9 this cat is going to jump yet. Your position is plain
10 and I understand you to an extent. I just don't agree
11 with you that because I made a ruling days ago in quite a
12 different context, that that ruling covered this situation.

13 I don't know that that is true at all yet.

14 MR. FELDSHUH: May I just most respectfully,
15 your Honor, call your Honor's attention to the Harris case in
16 Supreme Court.

17 THE COURT: I don't understand what the Harris
18 case has to do with this.

19 MR. FELDSHUH: It has to do with whether or not
20 a prior conversation of an accused can be brought in on the
21 issue of credibility when it definitely is impermissible
22 on the direct Government's case, and Harris specifically
23 held that it is only where the accused himself, the defendant,
24 takes the stand that that statement can be used to affect
25 his credibility.

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THE COURT: The Government isn't even offering

1 the transcript.

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3 MR. GOULD: My understanding of what your Honor
4 has done --

5 THE COURT: I am sorry, I can't hear. Gentlemen,
6 I wish you would keep quiet down there. There is too much
7 interference here.

8 MR. GOULD: I was keeping my voice down.

9 I understand what your Honor is doing is giving
10 this man an opportunity to see that he said something which
11 is seemingly at variance with his last answer.

12 THE COURT: Correct.

13 MR. GOULD: I think the Government is perfectly
14 within its rights in confronting him with that at this
15 point.

16 I do feel also, however, that whatever his final
17 answer is, the Government is bound by it and it doesn't
18 open the door to other --

19 THE COURT: I didn't disagree with you.

20 MR. GOULD: I am saying it for Mr. Feldshuh's
21 comfort so we can terminate this.

22 THE COURT: That is the point I was trying to
23 make, Mr. Feldshuh. I already told Mr. Sorkin that because
24 of my concern for your client's position I am going to
25 insist, and he agrees -- he didn't take a different tack as

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2 I understood him -- that he is going to be bound by the
3 answer. But that doesn't mean that Mr. Sorkin is hand-
4 cuffed in dealing with this witness to the extent he can't
5 even show him this transcript.

6 The jury doesn't know what that transcript is.
7 The jury doesn't know about the tape.

8 MR. FELDSHUH: We were on the record, your Honor.
9 I wanted to bring that to your Honor's attention.

10 THE COURT: In terms of alerting me, I appreciate
11 that. I agree with you there. I appreciate your concern,
12 but I hasten to add I haven't done anything yet that puts
13 your client in any jeopardy.

14 All right. We will have to wait until we hear
15 from these people.

16 (Pause.)

17 THE COURT: Yes, could you come in and sit down,
18 please, so you all hear this.

19 Mr. Allen, you have had a chance to read that
20 transcript?

21 THE WITNESS: Yes, your Honor.

22 THE COURT: And you recognize, I think, that that
23 is a transcript of a tape which came about because you went
24 into the office of Martin Frank after agreeing to do so with
25 the agents and there was a conversation in his office.

1 You remember that?

2 THE WITNESS: Yes, sir.

3 MR. TURCHIN: Your Honor, can I interject for
4 a moment? The point of his agreeing to do anything --

5 THE COURT: I know he claims he does not. How-
6 ever, there is certain evidence in the record already which
7 indicates that at the very least there is a substantial
8 dispute on that.

9 In any event, he went. Let's put it that way.

10 THE WITNESS: Yes, sir.

11 THE COURT: I don't want to argue that point with
12 you, although frankly your claims of going there against your
13 will are at least somewhat contradicted by certain words
14 coming from your own lips, but we will pass that one. I
15 don't want to bother you with that concern here.

16 What I am really concerned about is that you have
17 had a chance to look at that and assuming the tape is accu-
18 rate -- I don't know if you have ever had a chance to listen
19 to that tape. However, I want you to know that I have, and
20 I recall that statement and it seemed to me that the transcrip-
21 is substantially accurate. So that I am particularly con-
22 cerned from your point of view that you understand that it
23 is possible that your answers so far might be construed by
24 a grand jury as being a false and perjurious statement in
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a court of law.

THE WITNESS: Your Honor --

THE COURT: Don't say a word because I just want to know what your position is. I don't want you to blurt out anything unless you and your counsel, Mr. Turchin, have fully reflected on the matter.

Do you want to give any further answers on this subject?

THE WITNESS: I just conferred with my attorney. I may not be phrasing this legalistically, your Honor.

THE COURT: You don't have to.

THE WITNESS: I have been severed from this case, and I assume that win, lose or draw, the Government may try me on the Training case with myself as the sole defendant.

In view of the fact that I am still within the ken of the Government as to this case, I want to take the Fifth because I prejudice my right if and when I am tried by the Government on Training, which Mr. Sorkin has indicated to you he will try me.

THE COURT: Wait a minute. I assume what you mean by that, if this Court were to grant your motion to set aside your plea, then you would assume, and I think you are right, that the Government might try you on the Training With the Pros case.

1 THE WITNESS: Mr. Sorkin said in your presence
2 he would try me.

3 THE COURT: I think you ought to assume that
4 anyhow. You and Mr. Turchin are quite right on that.
5 That I understand.

6 To put the matter simply, what you would like
7 to do is invoke your privilege on this particular matter?

8 THE WITNESS: Yes, your Honor.

9 THE COURT: All right. Thank you, Mr. Turchin,
10 for stepping into the breach here.

11 Gentlemen, before we call the jury back we now
12 know that Mr. Allen wants to invoke the privilege and I
13 think he is entitled to.

14 MR. SORKIN: Your Honor, I quite agree. If that
15 is the case, your Honor, I think I should only point out to
16 your Honor I intend to go through this transcript and ask --

17 THE COURT: No, no. Again, Mr. Sorkin, don't
18 shoot from the hip. You don't mean that literally. You
19 don't intend to go through that whole transcript.

20 MR. SORKIN: I intend to go through statements
21 made by Mr. Frank, ask him if Mr. Frank made certain statements
22 to him. If he says he is going to take the Fifth on the whole
23 transcript, I needn't go through it.

24 THE COURT: Once again we have a problem here,
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2 Mr. Sorkin. I don't understand the United States Attorney
3 in this case.

4 It seems sometimes that you have a desire for
5 self-destruction. We can't do something like that.

6 First of all, it wouldn't be probative because
7 the only key matter is what you have already shown him, right?

8 MR. SORKIN: Yes, your Honor.

9 THE COURT: Second of all, you have got the
10 concern to keep the integrity of the pending lawsuit in
11 which Martin Frank is a defendant.

12 Your lack of understanding all these times
13 just really concerns the Court a great deal. I marvel at
14 some of your hip shooting.

15 MR. SORKIN: Your Honor, may I just then have
16 a moment to reflect on what we better do?

17 THE COURT: I think you better. It is too
18 important not to reflect.

19 (Pause.)

20 MR. SORKIN: Your Honor, there is a larger problem
21 here which presents another alternative to us, and I think
22 we are at a point where it is serious enough where I would
23 like the opportunity to discuss it with Mr. Edwards, and Mr.
24 Mollo because -- I don't say we anticipated this problem, but
25 we have an alternative approach in the event that this

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2 problem occurred. I would like perhaps 10 or 15 minutes
3 to check this out. I think we are entitled to that.

4 THE COURT: Look, you are entitled to some time.
5 As a graduate of that office and as a person aware of the
6 personalities whom you just mentioned and others, I am also
7 aware that these things can stretch on.

8 This is the Government's case. This is the jury
9 which the parties in this case have selected. Let's not
10 impose upon them any more than we already have, my
11 dear Sorkin.

12 You tell Mr. Mollo and Mr. Edwards that this Judge
13 requires that we come snap, snap to attention here. Let's
14 not dilate extensively. I will give you ten minutes.

15 MR. SORKIN: Thank you, your Honor.

16 (Recess.)
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2 THE COURT: What do you wish to submit?

3 MR. SORKIN: I have to catch my breath a
4 second, your Honor.

5 Your Honor, we would like to proceed along these
6 lines. The question will be put to Mr. Allen and Mr. Allen
7 give whatever answer he wishes to give and that be done
8 in the presence of the Court and the jury.

9 THE COURT: Wait a minute. You mean that is all
10 that came out of this marvelous meeting? That makes no
11 sense to me. You mean to put what to Mr. Allen?

12 MR. SORKIN: That very question that we put to
13 him before we broke, your Honor. Did Mr. Frank at any time --

14 THE COURT: All right.

15 MR. SORKIN: The exact wording.

16 THE COURT: I think that is wise. We will
17 eschew going down the laundry list here in this transcript.

18 MR. GOULD: The only problem that I see is that
19 it is an obvious attempt to get him to assert the privilege
20 in the presence of the jury.

21 THE COURT: I don't think it is. I don't
22 think that is a fair comment.

23 MR. GOULD: They know that is what he is going to
24 do. He has already informed him. What probative value
25 does that have? Prejudicial, yes. Probative -- what? I

1 think it is an attempt to introduce an element of prejudice
2 in the case. The burden then falls on me to try to do
3 something about it.
4

5 THE COURT: Forget the burden. Let's stop right
6 there. I think your main point is the one that has to be
7 thought about.

8 In other words, what the argument comes down to is
9 this: If knowing what we do that Mr. Allen wants to invoke
10 the privilege, the effects are two: One, maybe some people
11 will hold that against Mr. Allen which I suppose you can hope
12 for. But the second point which concerns the defense, I
13 guess, is that it might hurt Mr. Frank without having any
14 real proactive valu- at all as far as the law sees it.

15 MR. GOULD: Pure prejudice.

16 MR. SORKIN: Your Honor, the burden -- I should
17 say not burden. The obligation on the Government, if the
18 Government knew that Mr. Allen was going to assert the Fifth
19 Amendment we had an obligation not to call him on the stand
20 as our witness. However, he is their witness. We have
21 a perfect right to ask him a question and get his response.

22 THE COURT: Wait a minute. I wish you wouldn't
23 use the words "perfect right." There is little perfection
24 on this globe that I know of but it certainly doesn't
25 exist in the criminal law system which is a mosaic of im-

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2 perfections. Come on, you don't mean that. If you have
3 a case that says this, I will go along with it.

4 MR. FELDSHUH: May I be heard on this, your
5 Honor?

6 THE COURT: Why do you have to be heard? The
7 point has been made.

8 MR. FELDSHUH: I want to add to this.

9 THE COURT: You want to help the Government?

10 MR. FELDSHUH: No, I want to help our position
11 in bringing to your Honor's attention merely a question
12 of ethics apart from this.

13 MR. GOULD: There are more than ethics involved.
14 I think it is both the law and the Canons of Ethics that
15 no lawyer, whether for the prosecution or the defense, can
16 put a witness on the stand and elicit from him an invocation
17 of the Fifth Amendment when he knows that that is what the
18 witness is going to say.

19 THE COURT: I wish you would understand, gentlemen.
20 I understand your argument. I moved by it and I want the
21 Government to respond. They are the ones that want to do
22 this.

23 MR. SORKIN: I want to get you a case. I do
24 not have it now.

25 THE COURT: If you get me a case I will do this.

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MR. SORKIN: Offhand, your Honor, the only case I know of is the Eastern District case.

THE COURT: I want a case from an Appellate Court, preferably our own.

MR. GOULD: There is no such case in any Appellate Court, your Honor, that they have a right to put a witness to the best in front of a jury of claiming the Fifth when they know in advance he is going to take the Fifth.

THE COURT: Look, I believe you are right. That is why I am giving Mr. Sorkin the opportunity. You have been too persuasive by halves. Let's give him a chance.

Here is what we are going to do, Mr. Sorkin. I am tired of seeing you run around out of breath. Mr. Flannery is a capable young man potentially, but nobody lets him do anything.

Why don't you let him handle this, we will bring in the jury, go off to another subject and if you find the case, fine.

MR. SORKIN: Very well, your Honor. In other words, Mr. Feldshuh, to comfort you, we will not permit the Government to go forward on this issue until later if they can persuade me with a good case. Do you follow me?

MR. FELDSHUH: I understand your Honor's ruling. Thank you very much.

1 qb-5

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2 THE COURT: Good for you.

3 (In open court; jury present.)

4 THE COURT: All right, ladies and gentlemen.

5 I proved to be a rather poor prophet as to time, but I think
6 we are resolved in our technical problems and ready to go
7 ahead.8 Q Mr. Allen, do you recall Mr. Gould asking you this
9 question -- for the record, your Honor, I withdraw the pre-
10 vious question and I will go on to another one.

11 THE COURT: All right.

12 Q Page 2461 of the transcript, Mr. Allen, do you
13 recall Mr. Gould asking you this question:14 "Q Did you ever discuss Training With the Pros with
15 Brad Thurlow?

16 "A No, sir.

17 "Q Did you ever tell anybody you discussed it with
18 Brad Thurlow?

19 "A Brad basically bought blue chip stocks."

20 I would like to know, Mr. Allen, did you ever
21 tell anybody that you discussed Training With the Pros with
22 Brad Thurlow?23 A You told me that Mr. D'Onofrio would testify to
24 that.

25 Q Mr. Allen, we went through that yesterday.

1 qb-6

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2 A If you want an answer that is truthful, if you
3 don't like what I say you cut me off.

4 Q I do not intend to cut you off.

5 A You told me Mr. D'Onofrio would say that he
6 heard me talking to Thurlow in my office.

7 THE COURT: Just a moment, Mr. Witness. Let's
8 go back.

9 Put the question again so that Mr. Allen under-
10 stands it.

11 When you get the question, answer only the
12 questions.

13 Q I am going to ask you Mr. Gould's question. The
14 question he put to you "Did you ever tell anybody you dis-
15 cussed the -- meaning Training with the Pros -- with Brad
16 Thurlow, yes or no?"

17 A I don't remember this, mentioning my discussions
18 with Brad, no.

19 Q Did you discuss it with Mr. Thurlow?

20 A I don't believe I did. I don't recall. I
21 don't recall ever discussing Training with Mr. Thurlow.

22 Q Did you tell Mr. Bonavia you discussed Training
23 with Brad Thurlow?

24 MR. GOULD: I object to that, your Honor.

25 THE COURT: Did you ever tell Mr. Bonavia what?

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2 MR. SORKIN: Did you ever tell Mr. Bonavia that
3 you discussed Training with the Pros with Brad Thurlow?

4 MR. GOULD: Bonavia never said anything like
5 that in this case.

6 THE COURT: I don't recall that he did either.

7 MR. SORKIN: Your Honor, I am merely trying
8 to test the witnss' recollection and his credibility.

9 THE COURT: I don't see how we have anything to
10 gauge that.

11 Sustained.

12 Q Mr. Allen, did you meet with Mr. D'Onofrio in
13 the end of 1969?

14 A I saw him on a number of occasions, yes.

15 Q Where?

16 A At the end of '69 or '68? What year?

17 Q I said '69.

18 A At the end of '69?

19 Q Yes, sir.

20 A I saw him in New York sometimes at his office,
21 sometimes at a bar and he may have attended my son's engage-
22 ment party, I don't remember. It was November '69.

23 Q Did you at the time consider Mr. D'Onofrio a
24 friend of yours?

25 A Not a personal friend, no.

1 qb-8
2 Q Did you invite him to your son's engagement
3 party?

4 A I believe I did.

5 Q Do you know a man by the name of William Brief?

6 A What is the name?

7 Q Do you know a man by the name of William Brief?

8 A Billy Brief, yes, sir.

9 Q Did you ever meet Mr. Brief at Mr. Stoller's
10 house?

11 A On a number of times, yes, sir.

12 Q Do you ever recall meeting Mr. D'Onofrio there?

13 A At Phil's house?

14 Q Yes, with Billy Brief.

15 A No, I don't remember seeing him with Phil and
16 myself at Phil's house, no, sir.

17 Q Let's go back to Mr. D'Onofrio in 1969, Mr.
18 Allen. Where did you meet him?

19 A I answered that. I said at his office, at my
20 office, at a bar, at my son's party perhaps. I already
21 answered that.

22 Q Did you meet him in December 1969?

23 A In December '69?

24 MR. GOULD: That has been asked and answered three
25 times, your Honor. He said he met him in 1969.

1 qb-9
2 MR. SORKIN: I am trying to get a specific date,
3 your Honor.

4 THE COURT: We tried this yesterday, as I
5 recall.

6 Q Do you recall meeting him in December, Mr.
7 Allen?

8 A I may have.

9 Q Was Mr. Bonavia present at any of those times when
10 you met Mr. D'Onofrio?

11 A You are talking about a meeting that was held in
12 December? I don't follow you. Did I ever meet Mr.
13 Bonavia with Mr. D'Onofrio in 1969?

14 Q Yes, sir.

15 A Yes, I did.

16 Q Where?

17 A At Ray's office.

18 Q Do you remember the conversation?

19 A Yes.

20 Q Tell us, please, what Mr. Bonavia said and what
21 Mr. D'Onofrio said.

22 MR. GOULD: I object to this. This isn't
23 proper cross examination. We didn't have anything like this
24 on the direct. If he wants to make him his witness for
25 this it is all right with me.

1
2 THE COURT: There is the danger that you may
3 be, Mr. Sorkin, but again I suppose what you are trying
4 to do is attack his credibility. If you are, there must
5 be some other point.

6 MR. SORKIN: I ask again, does Mr. Allen recall
7 meeting Mr. Bonavia and Mr. D'Onofrio, and if he recalls,
8 what the conversation was at the end of 1969.

9 THE WITNESS: Yes, I do.

10 MR. GOULD: Could we at least have it limited
11 to Training with the Pros?

12 THE COURT: I hope so.

13 A This was at the Black Hawk Downs, the racetrack.

14 Q Let's talk about Training with the Pros --

15 A That is not what they talked about so how can I
16 tell you about it?

17 Q There was no discussion about Training With the
18 Pros?

19 A There may have been but I recall Black Hawk race-
20 track.

21 Q You don't remember any discussion --

22 MR. GOULD: Wait a minute.

23 THE COURT: You yourself suggested, and I
24 agreed, nothing else other than Training. The answer is, Mr.
25 Witness, that you don't recall anything was said at this

1 conversation about Training?

2 THE WITNESS: No, sir, at the racetrack.

3 THE COURT: Forget the racetrck. We are not
4 interested in that.
5

6 Q Mr. Allen, do you recall being asked this question
7 yesterday by Mr. Gould, or the day before yesterday, Page 2473,
8 Line 2:

9 "Q Now, sir, did you have a conversation with
10 D'Onofrio from outside of Mr. Sorkin's office?

11 "A Yes, sir.

12 "Q Was anybody else present?

13 "A No, sir.

14 "Q Just you and D'Onofrio?

15 "A Yes, sir."

16 Tell us, please, what the conversation was, Mr.
17 Allen.

18 MR. GOULD: If your Honor please, he did tell
19 what the conversation was. That is no technique of cross-
20 examination, simply to make him repeat it when he has already
21 said it. Here it is right here on the same page.

22 THE COURT: I would have thought that the question
23 you really wanted to ask, Mr. Sorkin, was was there anything
24 more to the conversation. In other words, I don't know
25 how to assess your question because I don't know what you

are trying to get at.

MR. SORKIN: I want to know today what he recalls of that conversation rather than what he said two days ago.

MR. GOULD: I will withdraw the objection if that is what he wants to do, to test his memory.

THE COURT: As I suspect, you want to know if there was anything more to the conversation.

MR. SORKIN: Yes, your Honor.

MR. GOULD: What he said a few moments ago was that he wanted to test his memory. I withdraw the objection.

THE COURT: I am not interested in a memory test because I am not sure that is what he wants. Would you please help us, Mr. Sorkin? What do you want?

MR. SORKIN: I want to know what the conversation was at that time.

THE WITNESS: The meeting downstairs at the marshal's office?

Q Outside Sorkin's office, my office.

A I believe the conversation I had with Ray -- I hadn't seen him for a while. I kidded him about losing weight and he said he went to the Fat Farm at Duke University.

Then I asked him if he was going to be a defendant or a co-conspirator in the Training case.

I don't remember whether I asked him that in the

1 marshal's office or outside your office. I met him on
2 a number of occasions.
3

4 Q Where?

5 A In Foley Square. Once outside -- once or twice
6 outside your office, once in the marshal's office, once outside
7 sitting in the park where the benches are. The meeting
8 I recall most vividly, Mr. Sorkin, was when I was surprised
9 that Ray said he anticipates being a co-conspirator and not
10 a co-defendant in Training and I said, "Ray, how can that be
11 possible," and he said, "That's part of my deal."

12 Q Was this --

13 MR. GOULD: Is he finished?

14 MR. SORKIN: Are you finished?

15 A There are a number of conversations.

16 Q Did you exhaust your recollection as to this
17 conversation?

18 THE COURT: We are outside Sorkin's door.

19 THE WITNESS: Yes, sir. He also told me incident-
20 ally that Lorne Green of the Bonanza Series was at the Duke
21 University Hospital with him.

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Q Now, Mr. Allen, did you ever tell Mr. D'Onofrio that you considered -- by the way, was this before or after the indictment was returned?

A I first met him --

Q No, this conversation, Mr. Allen.

A I believe before the indictment.

Q Before the indictment?

A Because I asked him whether he would be a co-defendant.

Q Mr. Allen, did you ever tell Mr. D'Onofrio that you considered it odd that you were named as a co-defendant in training and he was named only as a co-conspirator?

MR. GOULD: Can I have that read? I am sorry.

MR. SORKIN: Yes.

MR. GOULD: May I have it read, your Honor?

THE COURT: Yes.

(Question read.)

MR. GOULD: Thank you.

A I remember words to that effect; yes, sir.

Q What do you mean by you thought it was odd that he was named as a co-conspirator and you were named as a defendant?

A He told me on many occasions before I saw him in

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2 your office in '71, '72 and '73 that he anticipated that his
3 Training case would blow up in an indictment.

4 Q Did you tell him that you didn't think there was
5 any crime committed in Training?

6 A I didn't make any judgment. He told me he was wor-
7 ried during those years that he would be involved --

8 Q My question, Mr. Allen, at that time --

9 A At what time?

10 Q At the time that you told Mr. D'Onofrio that
11 you thought it was odd that you were named as a defendant
12 and he was named only as a co-conspirator --

13 A I didn't say that, Mr. Sorkin. You are not
14 saying what I said. I said to Ray that I have been told I
15 am going to be named in the Training indictment and he had
16 said to me but he was going to be a co-conspirator. Remember,
17 I said this happened before the indictment.

18 Q This was before the indictment outside my office?

19 A Yes.

20 Q All right.

21 A I believe it was; yes, sir.

22 Q Mr. Allen, let me ask you this: I think you
23 said you met Mr. Feeney at a bar in the main floor of the
24 Hotel Nova Park.

25 Do you recall testifying about that?

1 A I believe I met him at the Nova Park. He was
2
3 at the bar. We had dinner. He was also in my room.

4 Q And you testified that you had a conversation
5 with him?

6 A I think I said a number of conversations.

7 Q Let us take the meeting at the bar
8 in the main floor at the Hotel Nova Park.

9 Do you recall testifying about that?

10 A I don't know if I pinpointed it to the bar or
11 not, Mr. Sorkin.

12 Q Question page 2478, line 2. Do you recall
13 being asked these questions and giving these answers:

14 "Q Was there anything about Training With the Pros?
15 Just yes or no.

16 "A Yes.

17 "Q When, where and who was present?

18 "A I was alone with Jim at the bar on the main
19 floor of the hotel and I said 'Jim, I anticipate the
20 government is going to come down with the Training indict-
21 ment' and he said 'Thank God I never was involved in that'.
22 This is Jim speaking.

23 "Q Was there anything else he said about it?

24 "A He said he had enough problems about his own,
25 he doesn't know a damn thing about Training and he wished

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2 me luck on the case."

3 A Yes.

4 Q Did you tell Mr. Feeney at that time that you
5 were going to be named in the Training indictment?

6 A I told him in the summer of '73 you threatened
7 to name me in four, five cases, however specious, if I didn't
8 cooperate with you on Coatings and other matters.

9 Q Did you tell Mr. Feeney at the bar, Mr. Allen,
10 that you thought the indictments were specious?

11 A Yes.

12 Q Did you tell him --

13 A What indictment are you referring to?

14 Q The four or five you just mentioned.

15 A No, I told him that the passbook case was not
16 specious because I pleaded guilty and I cooperated with
17 Eberhardt.

18 Q Did you tell him that the Training indictment
19 was specious?

20 A My participation would be if I were named.

21 Q According to your participation, you didn't
22 commit any crime in Training, did you?

23 MR. GOULD: If your Honor please, I object.

24 MR. FELDSHUH: Objection as to form.

25 THE COURT: It sounds to me like you are just

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2 arguing with the witness.

3 Sustained.

4 Q Mr. Allen, you testified that you pleaded guilty
5 in the Pentron case.

6 Do you remember that?

7 A Yes, sir.

8 Q And that was an indictment that was brought
9 down in 1968?

10 MR. GOULD: I object to that, your Honor.

11 THE COURT: We have gone through this.

12 MR. SORKIN: Your Honor, this is preliminary.

13 I would just like to draw the witness' recollection back to his
14 testimony on Pentron.

15 THE COURT: He recalls it. He says he mentioned
16 it.

17 What is the point?

18 Q I think you also testified, Mr. Allen, that you
19 were indicted on the Terminal Hudson case and it was
20 dismissed on the grounds --

21 MR. GOULD: If your Honor please, this is
22 most improper. I don't want to say much more about it.

23 THE COURT: You have thrown me off, Mr. Sorkin,
24 because it seems from your point of view so unnecessary.
25 I don't know why defense counsel is objecting.

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2 MR. GOULD: Because I would like to finish
3 this ordeal some time, your Honor.

4 THE COURT: What is it you want to ask?

5 You remember you told us about these indictments.
6 What is the question?

7 Q Mr. Allen, isn't it a fact that when you were
8 indicted on the Terminal Hudson case you made accusations
9 against the Assistant United States Attorney at that time
10 back in 1968?

11 A Yes. When you say made -- excuse me.

12 Q Just a second, Mr. Allen. Yes or no?

13 A Yes, I did.

14 Q And that Assistant United States Attorney was
15 Lawrence Newman?

16 A Yes. He wanted me --

17 MR. GOULD: At this point, your Honor, I move
18 to strike it out.

19 THE COURT: Just a moment.

20 A I am sorry.

21 THE COURT: You weren't asked anything else.
22 Don't say anything else, please.

23 MR. GOULD: I object to this line. I move to
24 strike out the answer.

25 THE COURT: No, I am sorry. I will allow this

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2 as far as it has gone. But I agree with you, if you are
3 worried about getting into all the details, that I will
4 not allow. I certainly think this is a proper question
5 under the circumstances presented to the Court here.

6 Next question, Mr. Sorkin.

7 MR. SORKIN: I don't think I got an answer
8 to my previous one. I will ask it again.

9 Q Mr. Allen, isn't it a fact that you made
10 accusations against Lawrence Newman, an Assistant U.S.
11 Attorney in this office, back in 1968?

12 A I --

13 Q Yes or no, please.

14 A Yes, I gave an affidavit to the Court.

15 Q Yes or no, please.

16 MR GOULD: He answered.

17 A Yes, I gave an affidavit to the Court.

18 Q All right.

19 Isn't it a fact, Mr. Allen, that you accused
20 Mr. Newman of perfidy and malfeasance?

21 MR. GOULD: Objected to, your Honor. In view
22 of your Honor's ruling, I think it is improper for counsel
23 to pursue it.

24 THE COURT: I don't think I mean to be quite that
25 restricted. I think counsel is entitled to bring out a little

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2 bit about what the accusations amounted to without going
3 into detail of a great specific nature. There is a fine
4 line here perhaps, but I don't think it is so fine with what
5 we can't be --

6 MR. GOULD: How about perfidy and malfeasance?

7 THE COURT: Those are the words. He was
8 replaced by Mr. --

9 THE COURT: No. Look, Mr. Allen, please.

10 THE WITNESS: I am sorry, your Honor.

11 THE COURT: For the third day you are trying
12 to take care of everybody's problems all by yourself. Now,
13 that is not necessary or helpful.

14 THE WITNESS: I am sorry, your Honor.

15 THE COURT: You keep telling me you are sorry,
16 but you also keep doing it.

17 THE WITNESS: Well, your Honor, if he omits a
18 relevant fact --

19 THE COURT: No. Look, that is not correct or fair
20 either.

21 THE WITNESS: Okay, your Honor.

22 THE COURT: Mr. Sorkin, you could help avoid
23 this a little bit if you would put your next question.

24 MR. SORKIN: Yes, your Honor.

25 Q Mr. Allen, did you say, and I am quoting you,

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2 after the Terminal Hudson indictment came down, was filed,
3 naming you as a defendant, "I believe I will be vindicated
4 and your defense will bring out what I believe to be the
5 malfeasance, the perfidy of certain government agents and
6 government attorneys".

7 MR.GOULD: Is the question finished?

8 Q Did you say that?

9 A Say it where?

10 Q The Wall Street Journal.

11 A Yes, and I was vinicated. The case was
12 dropped.

13 Q Mr. Allen, did you say it to the Wall Street
14 Journal?

15 A Yes.

16 Q The case was dropped for prejudicial delay, isn't
17 that so?

18 MR. GOULD: If your Honor please, really, we
19 can't go into these --

20 THE COURT: Look, I am going to sustain that.

21 However, let me ask you something, Mr. Allen:
22 Was that a situation where you were purporting to cooperate
23 with the United States Attorney Newman?

24 THE WITNESS: No, sir, I was a defendant and at
25 one point -- I have to answer --

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2 THE COURT: No. You weren't cooperating?

3 THE WITNESS: No, sir.

4 THE COURT: All right.

5 The case, I take it, never did go to trial.

6 I believe you told us that.

7 THE WITNESS: I was convicted -- I pleaded guilty in
8 the Pentron. The Terminal Hudson was dismissed and I never
9 cooperated with the government.

10 THE COURT: Terminal Hudson was dismissed,
11 it didn't go to trial?

12 THE WITNESS: That is right, your Honor.

13 THE COURT: All right.

14 Anything else?

15 Q Isn't it a fact that every time you have been
16 questioned, Mr. Allen, by representatives of the United
17 States Attorney's Office or named in any indictments, you
18 have accused the government, the prosecutors, of mal-
19 feasance and perfidy?

20 A No, sir, I never accused Mr. Eberhardt --

21 Q Yes or no, this office.

22 THE COURT: Please, Mr. Sorkin. That is not
23 fair. You asked him a question and you ought to allow him
24 to answer it.

25 A I never accused the Strike Force, Mr. Eberhardt

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2 or Mr. Shaw of any perfidy or malfeasance. I said in my
3 letter to the Judge --

4 Q We have gone over the letters to the Judge.

5 A Why don't you recall what I said?

6 Q We have gone over that.

7 What about this office, Mr. Allen?

8 A What do you mean?

9 Q The question to you is --

10 MR. GOULD: If your Honor please, this is some
11 kind of an undisciplined debate between Sorkin and the witness.

12 THE COURT: Mr. Gould, you have been present here
13 and I have tried my best to deal with both of them.
14 Now, if you will sit down I will try again. Thank you so
15 much.

16 Now, gentlemen, I want this to go in an
17 orderly way. Mr. Sorkin, would you move back to the podium.
18 That would help a lot. Compose your thoughts and you,
19 Mr. Witness, listen carefully. We are well aware of your
20 feelings about Mr. Sorkin and you don't need to press
21 those upon us any longer. We know those.

22 Your question, sir, and make it precise so we can
23 understand it.

24 Q Mr. Allen, isn't it a fact that every time you
25 have been called before the grand jury in this office,

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2 every time you have been told you would be named in an
3 indictment filed by this office and every time you have been
4 involved in an investigation by this office, you have
5 accused one or more Assistant United States Attorney and
6 investigators of malfeasance and perfidy?

7 A No, sir, and my testimony --

8 Q Yes or no.

9 A No, I said --

10 MR. SORKIN: No further questions, your Honor.

11 MR. GOULD: Nothing more?

12 MR. SORKIN: Your Honor, however we do
13 reserve the right --

14 THE COURT: I understand you do. I have permitted
15 you to.

16 REDIRECT EXAMINATION

17 BY MR. GOULD:

18 Q Mr. Allen, when did you say you had your first
19 contacts with Mr. Sorkin or anybody else connected with
20 the United States Attorney's office with respect to the
21 matter of Training With the Pros?

22 A In the summer of 1973. Excuse me. I have to amend
23 that. I was once called down to an SEC hearing on Training
24 and I took the 5th Amendment.

25 Q That was in 1969?

1
2 A Because I was under indictment in another mat-
3 ter. That would be my first contact.

4 Q Mr. Allen, you will help us all a great deal
5 if you will listen carefully to my questions. I am
6 only interested at this moment, Mr. Allen, in your contacts
7 with the office of the United States Attorney's office, with
8 that office with respect to Training With the Pros.

9 You tell us that was in the summer of 1973,
10 correct?

11 A Yes, sir.

12 Q Would you tell us, sir, how it came about that
13 you had a contact with them on that subject?

14 A Mr. Sorkin called me and asked me to come
15 down to discuss the case called Coatings Unlimited.

16 Q Did he call you on the telephone?

17 A Yes, sir.

18 Q Had you known Mr. Sorkin before this?

19 A Yes, sir.

20 Q Did you go to see him?

21 A Yes. He asked me to come down without my
22 attorney.

23 Q Did you have a meeting with him then in the
24 summer of 1973?

25 A A series of meetings, Mr. Gould.

Q Who was present?

A On most of the meetings I was alone with Mr. Sorkin.

Q Confine yourself, please, to the subject of Training With the Pros.

What did he say to you and what did you say to him on that subject?

A He told me that the government anticipated coming down with an indictment against Training, that if I cooperated with the government he would not name me in the forthcoming case called Coatings Unlimited; if I refused to cooperate, he would name me in Coatings, however small or however thin my part may have been.

MR. SORKIN: May we have the date, your Honor, if possible?

MR. GOULD: I have tried to ascertain and all we have is the summer of '73.

THE COURT: Yes, I think we have gone through this date business. I suggest to both of you we leave it alone. You both tried and I see no point in going any further with this witness on dates.

MR. GOULD: Thank you, your Honor.

Q Now, sir, go on. Tell us about this conversation or conversations. Just the substance, what he

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said to you and you said to him.

A What he said to me was that he would name me in the Coatings case if I didn't cooperate in the Training. A few years prior to the summer of '73 Mr. Marty Frank legally embarrassed him at an SEC hearing on a stock called Harwyn and he never forgave Mr. Frank and he would try to prove that Mr. Frank and others structured the case called Training and it would be to my interest to testify, to go along with the government.

Q Anything else you remember about it?

A Yes, sir.

Q Tell us all you can remember, please, Mr. Allen.

A He said that he thought that Mr. Stoller had had a charmed existence and that if he would exert pressure upon me to bring in indictments against other Swiss banks that his office was investigating -- if he could get a conviction on Training, his office would give him free rein to go after the major Swiss banks but they had to knock off Training to open the Pandora's box.

Q Anything else?

A He made some references to a book, a fictionalized version of my life and others on Wall Street and said that the book was embarrassing. I said, "Mr. Sorkin, I use it for 20 Century Fox. The book is a fictionalized

1 version of my life and others and I hoped to sell it to the
2 movies."
3

4 Then I said, "Mr.Sorkin, I have done many things
5 in my life that are wrong, but" -- I said, "Mr. Sorkin, I have
6 been named in a Strike Force case, the passbook case with
7 Eberhardt. If you name me in Coatings and assuming I am con-
8 victed, if I am convicted, what will happen?"

9 He said, "We will see to it that you get con-
10 secutive sentencing."

11 Then he said to me, "And there is another
12 thing Allen. We have a document showing that you once
13 receive a payment from a Mr. Bonavia for 30 or \$32,000 but the
14 payment on the record says Mrs. J. Allen. We could name
15 your wife."

16 MR. SORKIN: Is this still the summer meeting,
17 Mr. Gould?

18 MR. GOULD: It is the way I understand it..

19 THE WITNESS: He said he had evidence -- I
20 don't know if he had said a paper -- he said he had evidence
21 of a payment made to me at the bank or testimony about
22 such a payment was made to my wife rather than myself and
23 he said, "You know she can't take the emotional stress
24 because she is hospitalized with blood clots."

25 The thing that I really blew my stack on,

1 gabr

Jerome Allen-redirect

2913

2 Mr. Gould --

3 Q I just want to know what the conversation
4 was. Don't tell us --

5 A Basically that the conversation was that he
6 wanted me -- the phrase he used is that "Some prosecutors
7 have an instinct for the jugular," and he said he did.

8 Q He did?

9 A He had an instinct for the jugular.

10 Q Go on. Anything else you remember about these
11 conversations in the summer of '73?

12 A Yes. He said he wanted me to come back and
13 see him since Marty --

14 Q He, Mr. Sorkin?

15 A Mr. Sorkin.

16 Q Go on.

17 A Since Marty Frank was a prime target of his
18 investigation, it would be embarrassing in a sense to have
19 Marty Fran represent me even during the summer because I
20 asked him "Why can't you bring Marty down"?

21 He said, "He's going to be a target of this case
22 and it is more important to us that you give us feed back
23 from his office."
24
25

Tk 5

qb-1

Jerome Allen-redirect

2914.

2

Q Now, sir, during the summer of 1973, did you

3

agree in any way to cooperate with the Government?

4

A No, sir.

5

Q Did there come a time in the summer of 1973, sir,

6

when you were named in an indictment in this office, in this

7

building?

8

A I believe the first or second week in August I

9

was named in the case callee Coatings Unlimited.

10

Q After that indictment came down -- that was one

11

of the cases Mr. Sorkin had mentioned to you, right?

12

A He was threatening to name me in.

13

Q And so you were named in it?

14

A Yes, sir.

15

Q After you got named in the Coatings case did Mr.

16

Sorkin communicate with you again?

17

A Either he or Mr. Doonan contacted me.

18

Q And did you come down to see him or them again?

19

A Yes, sir.

20

Q When was that?

21

A That would be August right through September.

22

Q What conversations did you have with him then,

23

if any, about Training With the Pros?

24

A I expressed my bitterness on the Coatings because

25

I wasn't named in the civil action in the SEC. The SEC

qb-2

Jerome Allen-redirect

2915

had investigated Coatings --

MR. SORKIN: Objection as to what the SEC did.

Q Only what you said.

A I didn't think he deserved to be named in the Coatings and he said, "We will name you peripherally in three or four cases and your wife," and then he pointed and said, "We have what I call an on-shelf indictment. Do you want your wife and mother-in-law, even though we can't convict them? Following the fact that you had a divorce, do you want your wife's name in the paper? We can't convict her, but how does it read in Beach Haven, New Jersey, to have your wife in the paper."

Then he said something I don't want to make public.

Q You have to make it public.

MR. SORKIN: I want to hear the whole conversation too, Mr. Allen.

THE COURT: Wait a minute, Mr. Sorkin. We don't need to add that. He is apparently asking this. Let's go back.

MR. GOULD: Let's get the conversation.

THE WITNESS: Must I?

Q Yes, you must answer the questions truthfully, sir. That is what you must do.

qb-3

Jerome Allen-redirect

1
2 A I was divorced in May of 1973 after 25 years of
3 marriage. It was my fault. He said that if I didn't
4 cooperate with the Government he could not, but a witness
5 friendly to the Government would see that a letter, an
6 indiscreet letter would surface during the trial, a letter to
7 a girl friend of mine, Mr.Gould.

8 Q He said that?

9 A Yes,sir.

10 Q Was there anything else about this conversation?

11 A Which one are you referring to?

12 Q Any conversations you had after you were named
13 as a defendant in Coatings.

14 A He said, "You were Mr.Stoller's partner for
15 many years. He has never been indicted or convicted."

16 MR. SORKIN: When was this conversation?

17 MR. GOULD: I have just identified it, your
18 Honor, as after the Coatings indictment.

19 A He said to me, "I would like to make a package
20 deal. Bring down your former partner,Mr.Stoller," because
21 at that point Mr.Stoller and I were in business together.

22 He said, "If you can bring him in we can make
23 things easier for both of you. He has never had a conviction
24 He probably will get a suspended sentence."

25 I said, "How can I bring him in?"

1
2 And he said, "You can say we have documents which
3 would crucify him under Training." His primary theme, Mr.
4 Gould, was that I would receive consecutive sentencing and
5 that my former wife, although she couldn't be convicted, would
6 be the subject to newspaper publicity. Then I had balked
7 and I said, "Why can't I have an attorney," and he said,
8 "Why have an attorney that is going to be named."

9 I said, "I will go to the American Civil Liberties
10 Union," and he said, "Look at your background."

11 Q Now, sir, Mr. Allen, was Mr. Doonan present at any
12 of these meetings?

13 A Yes, sir.

14 Q And in these meetings was the subject of nar-
15 cotics mentioned by anybody?

16 A Mr. Doonan, sir.

17 Q What did Mr. Doonan say with respect to the subject
18 of narcotics?

19 THE COURT: Just a moment. I thought we had
20 already covered this one too. I don't understand why
21 we are going back to this.

22 MR. GOULD: There was some reference to it.

23 THE COURT: I know, but there was reference to
24 it on your direct too.

25 MR. GOULD: No, sir, I respectfully differ with

1 qb-5

Jerome Allen-redirect

2 your Honor. I never mentioned that.

3 THE COURT: I will accept you as being correct
4 and I will apologize but --

5 MR. GOULD: There was a reference to it.

6 THE COURT: He now says that he thought maybe
7 Doonan was joking about it. Didn't you tell us that?

8 MR. GOULD: If your Honor please --

9 THE COURT: Please, I am talking to the witness.

10 THE WITNESS: At the time, looking back --

11 THE COURT: Didn't you say to us the other day --

12 THE WITNESS: In retrospect I thought he was
13 facetious.

14 THE COURT: You thought he was facetious?

15 THE WITNESS: He may have been.

16 THE COURT: Do we have to go into this again?

17 MR. GOULD: I want to hear the words that he
18 say Mr. Doonan said to him. It is an important preliminary
19 matter to something else.

20 THE COURT: Very good, go ahead. Repeat it again,
21 Mr. Allen.

22 Q I would like you to tell us what if anything
23 Mr. Doonan said with respect to narcotics. The words, if
24 you can repeat them.

25

1
2 A Mr. Doonan was asking me with Mr. Sorkin to
3 cooperate with the Government or he would name me in a
4 number of cases. I said, "If that is true I will hire,
5 if I could, the best possible lawyer because God is on
6 the side of the big battalions."

7 And Doonan said --

8 MR. SORKIN: What?

9 THE WITNESS: God is on the side of the big
10 battalions."

11 I think I quoted Bernard Shaw.

12 MR. GOULD: I think it was Napoleon.

13 MR. SORKIN: We will concede it was Napoleon.

14 A There was some colloquy about the number of cases
15 and how I could beat them. He said, "We respect your in-
16 telligence but how would you like to wake up one day and find
17 some heroin planted in the glove compartment of your car,
18 perhaps in your suit jacket."

19 It scared me. Looking back I must say it must
20 have been facetious.

21 Q At the time he said it did you think it was
22 facetious?

23 A No, they hammered at me and they kept insisting
24 no lawyer be present and Mr. Sorkin also insisted that I see
25 him outside his office.

qb-7

Jerome Allen-redirect

1 qb-7 Jerome Allen-redirect
2 Q After this conversation in which this glove
3 compartment incident was mentioned, did you see Sorkin or
4 Doonan again?

5 A Yes, sir.

6 Q Did you talk about Training With the Pros?

7 A Yes, I did.

8 Q What was said in those conversations?

9 A He told me that Mr. D'Onofrio although he has
10 embarrassed the Government in other cases --

11 MR. SORKIN: I am sorry to interrupt. I want
12 to know after this meeting, when?

13 THE WITNESS: This is the late summer of '73 or
14 early September.

15 MR. SORKIN: In my office?

16 THE WITNESS: And outside your office.

17 Q Go ahead.

18 A You got me confused.

19 Q I want you to tell us what was said in these
20 meetings. Please, wherever you can would you try to tell
21 us the problem of chronology.

22 A He told me that -- he would use the Government
23 and his office interchangeably, they had a number of witnesses
24 primary of whom would be Ray D'Onofrio. I said how can you
25 use Ray, he is in 11 or 12 cases that I heard of. He said,

qb-8

Jerome Allen-redirect

1 well, he is the best we have and it is obvious to people
2 that he has met with you. He is going to be our witness.
3 He is going to be our key witness and he said that you won't
4 go into this case if you cooperate along because it embarrasses
5 us if one Government witness contradicts another.
6

7 Q This is early September 1973, correct?

8 A Yes, sir, I had been arraigned on the Coatings,
9 yes, sir.

10 Q Let me ask you, sir: In any of these conversations
11 at this time was the name of Mr. Pfingst mentioned at all,
12 Judge Pfingst?

13 A I don't recall, sir.

14 Q You don't remember hearing anything about that?

15 A No, sir.

16 Q After these conversations you went to Switzerland,
17 some time, didn't you?

18 A Yes, sir, my bail limits included Switzerland and
19 I went October 11 and 12.

20 Q You were in Switzerland in the beginning of October
21 1973?

22 A October 12 or 13, sir.

23 Q The early part of October '73 you were in
24 Switzerland?

25 A Yes, sir.

qb-9

Jerome Allen-redirect

1 qb-9
2 Q And it was at that time, was it not, that you
3 wrote these letters.

4 May we have Government Exhibits 37 through 42.

5 MR. SORKIN: We made copies, but I don't know if
6 they are legible so I will give the copy and the original
7 to Mr. Gould.

8 MR. GOULD: We can read them.

9 (Pause.)

10 Q This series of letters you wrote from Switzerland,
11 Government Exhibits 37 through 42, that you were shown
12 yesterday by Mr. Sorkin, you have them in mind, Mr. Witness?

13 A Yes, Mr. Gould.

14 Q Now, sir, the first letter you wrote was to the
15 then Attorney General of the United States, Mr. Bork, correct?

16 A Yes, sir.

17 Q What was the purpose of writing to him?

18 A I didn't feel that complaining to Mr. Sorkin
19 would do any good. At that time there were some changes in
20 the Department of Justice and I didn't know Mr. Bork. I
21 simply found out that he was the top man and I was always
22 told if you have a legitimate complaint go right to the top
23 because the people below would be more apt to shuffle
24 it aside.

25 Q What did you want Mr. Bork to do?

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A To investigate Mr. Sorkin's behavior.

Q Then you wrote another one to Mr. Eberhardt,
correct?

A Yes, sir.

Q These letters, the one to Bork and to Eberhardt,
were they written while you were incarcerated in Switzerland
or before?

A No, sir, they were written while I was not in-
carcerated and before the Coatings case went to trial.

Q So we have it then the one you wrote to Bork you
were not in the Swiss --

A I was at the Beau Rivage Hotel in Lausanne.

Q The BEau Rivage?

A Yes, sir.

Q And the one you wrote to Eberhardt was also in
the Beau Rivage?

A I believe it was the Nova Park Hotel.

Q In Zurich?

A Yes, sir.

Q And this one here, Government Exhibit 40, where
were you when you wrote that?

A That was a letter I wrote to the American Civil
Liberties Union and they wrote back saying they couldn't
understand my handwriting, would I please type a letter to

1
2 them.

3 Q So you typed it?

4 A Yes, they replied to my letter and I retyped it.

5 MR. SORKIN: I don't understand. This was
6 the letter they couldn't understand?

7 THE WITNESS: No, sir.

8 MR. GOULD: Everybody seems to understand it
9 pretty good.

10 THE COURT: Mr. Sorkin, if you don't understand
11 your chance will come again. We can't have two lawyers
12 interrogating at the same time. It doesn't work that way.

13 MR. SORKIN: I am sorry.

14 Q Let's get it straight.

15 I understand this letter dated November 26, Govern-
16 ment Exhibit 40 for identification, is that correct?

17 MR. SORKIN: Correct.

18 MR. GOULD: Not in evidence?

19 MR. SORKIN: 40 was moved into evidence.

20 Q Government Exhibit 40 in evidence in this
21 case, this is a letter that you wrote to the American Civil
22 Liberties Union?

23 A Yes, sir.

24 Q After you had written a handwritten letter?

25 A They had replied that they could not understand

1 my handwriting.

2 Q Thank you very much. When you wrote this one you
3 were at the Hotel Nova Park?

4 A Yes, Mr. Gould.

5 Q Not in prison?

6 A I wasn't in prison, no.

7 Q Now, sir, this one, Government Exhibit 41, which
8 is addressed "Dear Ike," and goes to Mr. Sorkin, that one
9 I understand was written from St. Antoine Prison, is that
10 right?

11 A Yes.

12 Q That is outside of Zurich?

13 A It is outside of Geneva. That is where Mr. Korn-
14 feld was.

15 Q When you wrote this you were incarcerated in
16 St. Antoine Penal Institution, correct?

17 A I was in solitary confinement, yes, sir.

18 Q You were the only one in the cell?

19 A Yes, sir.

20 Q How big was the cell?

21 MR. SORKIN: Objection. We didn't arrest him, the
22 Swiss did.

23 THE COURT: Sustained.

24 MR. GOULD: If your Honor please, it goes to
25

1 the quality of the letter, what conditions he was under
2 when he wrote the letter. They brought this in, I didn't.

3 THE COURT: I see what you mean. All right.

4 MR. GOULD: I think I am right.

5 THE COURT: I said that. I stand corrected, go
6 right ahead.

7 A It was a small cell by myself, a small bare light
8 and just a few books in French to read.

9 THE COURT: I didn't hear that last.

10 THE WITNESS: Just a few books in the cell to
11 read and a small light bulb and a bed.

12 Q And the food, did you get fed?

13 A One good thing I lost 40 pounds there. That is
14 the only good thing.

15 Q You actually wrote two letters to Mr. Sorkin
16 while you were in this resort, right?

17 A Yes, Mr. Gould.

18 Q And the two letters are Government Exhibits 41
19 and Government Exhibit 42?

20 A Yes, Mr. Gould.

21 Q And the thrust of your letters was "I will do
22 anything at all if you will just get me out of here," isn't
23 that right?

24 A I was advised --
25

1 qb-14

Jerome Allen-redirect

2 MR. SORKIN: Those letters are in evidence.
3 I don't know what the thrust of the evidence means.

4 THE COURT: I am going to sustain it.

5 Q When you wrote these two letters all you wanted
6 to do was to get out of the slammer, isn't that right?

7 A Yes. The first letter I had no lawyer.

8 Q And when you wrote these letters you had been
9 visited, had you not, by a representative of the State
10 Department, a Mr. Rand?

11 A Let me explain specifically for the record. I
12 was visited by Mr. Rand before I wrote the second letter.
13 The magistrate had me call the Embassy the night I was taken
14 off the prison train prior to writing the letter to Mr.
15 Sorkin.

16 Q And it was your belief, was it not, that if you
17 agreed to cooperate with the Government the Government
18 would get you out of the Swiss jail?

19 A Not just my belief. The magistrate said, when he
20 opened my attache case -- there are no search warrants,
21 he saw a copy of my two American indictments. I carried
22 them with me. Through his interpreter he said "It would be
23 best for you, Mr. Allen, although you legally can fight
24 extradition, to indicate a desire and cooperate and go home
25 and maybe we can drop the charges against you."

1 qb-15
2 Q So when you wrote these letters you had been
3 informed by the magistrate and by the American Consulate that
4 it would be helpful to you if you would agree to waive
5 extradition and go home and testify for the Government, right?

6 A I don't believe -- he may not have been the Ameri-
7 can Consul, but it was in the Embassy. It was an assistant
8 to the magistrate the first time.

9 MR. SORKIN: Which man in the Embassy? May we
10 have that?

11 Is that Dick Rand?

12 MR. GOULD: I have been doing this and doing
13 pretty good without Sorkin helping me.

14 THE COURT: Gentlemen, please. Mr. Sorkin, this
15 is not the form. Next question, Mr. Gould.

16 Anything else?

17 MR. GOULD: Yes, your Honor.

18 (Defendant Stoller Exhibit AB was marked for
19 identification.)

20 Q I show you this document, which has been marked
21 Stoller Exhibit AB for identification. Did you at or about
22 the same time as those other letters write this letter?

23 A Yes, I sent this to my attorney after I mailed
24 the letters to the Judges.

25 Q And your attorney at the time was?

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A Marty Frank.

Q The same fellow here, the defendant in this case, Mr. Frank?

A Yes, sir.

MR. SORKIN: I am sorry to interrupt, but he said at the time of the other letters. Is that before the letters he wrote in jail or the letters after he went to jail?

MR. GOULD: This obsession with chronology has me disturbed. Maybe I can do something about it.

Q Can you tell the exact date on which you wrote this letter?

A I wrote this letter, I believe, before I went to jail.

Q If you look at the postmark on it, does that refresh your recollection in any way as to when you wrote the letter?

A The Swiss give the date first, the 23rd and the tenth month.

Q October 23, 19 --

A Here is the postmark, before I went to prison.

Q And this was where?

A The Beau Rivage Hotel.

MR. GOULD: I offer it in evidence.

MR. SORKIN: May I just see it, your Honor?

qb-17

Jerome Allen-redirect

2930

1

2

No objection, your Honor.

xxx

3

(Defendant Stoller Exhibit AB was received

4

in evidence.)

5

MR. GOULD: May I have your Honor's permission

6

to read this to the jury?

7

THE COURT: Yes, go ahead.

8

(At this point Defendant Stoller Exhibit AB

9

received in evidence was read by Mr. Gould to the

10

jury.)

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Tk 6

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gab-1

Jerome Allen-redirect

2931

2

Q What is the next consecutive page after that,

3

Mr. Allen? You tell me.

4

A Five. It starts here. Do you want me --

5

Q I will read it.

6

(Mr. Gould read from Defendant Stoller Exhibit

7

AB in evidence to the jury.)

8

A It was Judge Tenney. I corrected that.

9

Q In this letter here, when you wrote to Mr. Sorkin

10

the document which has been marked as Government Exhibit

11

41, I would like to direct your attention specifically to

12

this language at the bottom of it, "I want to come back but,

13

please, not the kind of reception committee that greeted

14

Phil. You can hold the green book forever." Signed Jerry

15

Allen, right?

16

A Yes.

17

Q What is this about the green book? What does that

18

mean?

19

A Mr. Sorkin when he interviewed me had a big

20

looseleaf book.

21

MR. SORKIN: What?

22

THE WITNESS: A big looseleaf book, hard cover

23

looseleaf book with three or four hundred pages of text in

24

it with little things indicating who was to say what. It

25

may have been green or blue-green. I am a little bit

color blind.

I would say such and such.

He said this before an assistant named Marshall Trager or Prager. At one point I didn't answer correctly. He threw the book to the floor. He said, "Pretend you are on stage, that this is a scenario. If we lose, the show is over."

THE COURT: All right. We will take the morning recess at this point. Ten minutes, ladies and gentlemen.

THE COURT: All right, Mr. Gould.

A Yes, sir.

A I was exonerated and released I think around
 ry 13 or 14. I can't remember the exact date.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

1 gab-3
2 A A number of them, Mr. Gould.

3 Q He called you or you called him?

4 A I called him.

5 Q Would you give his Honor and the jury the substance
6 of those conversations. What did you talk about?

7 A I --

8 Q I am chiefly interested about Training With the
9 Pros. Try to keep it to that.

10 A Yes, sir. I was released from jail. I went to
11 the Hotel Deraux and I called Mr. Sorkin and said that I would
12 waive extradition and that I would return to the States
13 either the next day or the following day. He asked me if I
14 would cooperate and I said I would, but I wanted to know what
15 that cooperation entailed. What would be the understanding.

16 He said, "I want you to know, Mr. Allen, that
17 if you return voluntarily and I know that you have a legal
18 right to fight extradition, that you will be arrested at
19 the airport."

20 I said, "On what indictment is that?"

21 He said, "Well, we will discuss it when you get
22 here. I want you to know you will be arrested at the
23 airport."

24 I said, "I expect that. I anticipate that."

25 I said, "What is it you want?"

1 gab-4
2 He said, "I want your full cooperation with
3 this office so we can get it" -- "We are coming down with the
4 Training indictment. We want you to work with us to get
5 a conviction in the Training case."

6 I asked him what else the office would do for
7 me if I cooperated. He said first -- he repeated what he
8 had told my attorney, that the bail would be the cash on hand
9 of what is in my pocket because I was dead broke. He said the
10 Government agreed to pay for my ticket, that I wouldn't
11 have to tape or entrap anyone, that my wife would not be
12 named or my former wife, in any indictments, and that he would
13 drop all conversation about consecutive sentencing,
14 but that it was important to his office to get the Swiss banks
15 once and for all, to use Training as the leverage to get the
16 Swiss banks.

17 Q And then you did come back to the United States,
18 is that correct?

19 A The next morning. We had a number of conversa-
20 tions.

21 Q That is the substance of them, isn't it?

22 A Yes. I flew back TWA. I was escorted upon
23 the plane and flew back, yes, sir.

24 Q When you got back I understand you were arrested
25 at the airport?

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A Yes, sir. I expected that.

Q And you were brought over to this building, correct?

A I was cleared through Customs and brought right down here, sir.

Q Was Mr. Sorkin at the airport when you were arrested?

A No, sir.

Q When you were brought to this building, did you see him then?

A Two men from the --

Q Just answer.

A Yes, sir, I was brought right to his office.

Q You came from the airport, you were arrested there. Were you handcuffed?

A No, sir.

Q These two agents brought you to this building, right?

A I think there were three people, yes.

Q They brought you to this building and there you were brought to Mr. Sorkin, is that right?

A Immediately brought there, yes, sir.

Q I see. Then you had a conversation with Mr. Sorkin at that time, correct?

1
2 A Yes, sir.

3 Q That was about January 15, 1974?

4 A Yes, sir.

5 Q What was the substance of the conversation with
6 Mr. Sorkin?

7 MR. SORKIN: May we have, your Honor, if anyone
8 else was present, please?

9 MR. GOULD: Oh, yes.

10 Q Was anyone else present?

11 A The people came in and out. I don't remember
12 because I was there quite a few hours.

13 Q Just the substance of the conversation.

14 A He said to me -- he said, "First I am glad you came
15 back without having an extradition fight," and he said, "The
16 first thing is the duty Judge or the magistrate leaves around
17 six o'clock. He is waiting for you. He knows you are
18 coming here.

19 "I want to tell you right now that your former
20 wife has to put up her only asset, her summer home, which
21 is worth 40 or \$50,000 for bail."

22 I said, "I thought you told me, Mr. Sorkin, and
23 my lawyer has a memorandum in Switzerland, that if I return
24 voluntarily that bail would be cash on hand. If I am not
25

1 fighting extradition and came back, I am not going any place."

2 He said, "I still insist." I said, "That's
3 not what you told me on the phone."

4 He said, "You are here."

5 I said, "Okay, I will ask my wife to" -- "my
6 former wife for her one remaining asset."

7 Q Forget about the bail. We are principally interested
8 in Training With the Pros.

9 What was your conversation about Training With
10 the Pros?

11 A He told me -- this was in January. He said,
12 "Within a few weeks, maybe a month or so, we are coming
13 down with an indictment on Training With the Pros and I
14 expect you to cooperate with this office and to corroborate
15 that which Mr. D'Onofrio will testify to."

16 Q Did he at that time tell you what it was
17 D'Onofrio would testify to?

18 A He highlighted his testimony, yes, sir.

19 Q As briefly as you can, what did he say D'Onofrio
20 was going to testify to?

21 A He said that D'Onofrio would testify that Marty
22 Frank, Phil Stoller and myself and Fred Herbert structured
23 the entire deal to promote Training With the Pros, that
24 there were a series of meetings held in Marty's office or
25

meetings with me at the Baur au Lac in June and July.

When I said "Ike, I wasn't at the Baur au Lac in June," he said "Well, I don't want to have two witnesses fighting with each other on the stand or being torn to shreds on testimony."

Then he said to me that -- he saidk "How did you sustain yourself while you were in Switzerland?"

I said, "I did some training."

Q Mr. Allen, I am only interested in your conversations with Mr. Sorkin relating to Training with the Pros.

A He also told me that Mr. Bonavia would be a witness for the Government.

Q Did he tell you what Bonavia was going to say?

A He made -- I don't believe he did at the first meeting.

Q All right. Anything else he told you about what D'Onofrio was going to say about the case in that early meeting?

A Yes. He was going to say that D'Onofrio would claim that I paid Mr. Frank a sum of money to help us on this so-called nominees.

Q Mr. Allen, what, if anything, did you say when Mr. Sorkin told you what D'Onofrio was going to testify to?

A I said, "Ike, that's not the way I know the situation."

1 gab-9
2 And he said, "Look" -- that is the time I really
3 got scared. He leaned --

4 Q Don't tell us about your own emotions.

5 A He said, "If we win the case" -- "If you cooperate
6 with this office we are going to insist that the cooperation
7 be put in a written memorandum and that when we ask for
8 leniency" -- "it is important that we win the case in order
9 for you to get leniency from this office."

10 Q Mr. Allen, I am asking you what, if anything,
11 you said to Mr. Sorkin when he told you what D'Onofrio
12 was going to testify to about Training With the Pros?

13 A I said, "That's a rotten thing."

14 He said, "D'Onofrio is the best we have."

15 Q What, if anything did you say when he told you
16 what Mr. Bonavia was going to testify to?

17 A I said, "Joe apparently is a poor loser."

End 6

jqbr 1 Jerome Allen-redirect

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1
2 Q Did you in words or substance tell him
3 that that was untruthful?

4 A That what was untruthful?

5 Q What Bonavia was going to say was untruthful.

6 A Yes, sir.

7 Q I gather from your testimony on cross examination
8 following that meeting with Mr. Sorkin you had a number of
9 meetings at the U.S. Attorney's office?

10 A Yes, sir.

11 Q How many would you say between January 15th,
12 when you returned to the United States and the early part
13 of March when the indictment in Training With the Pros came
14 down?

15 A You mean mid-February when the indictment came
16 down.

17 Q In February when the indictment came down,
18 yes.

19 A I would say nine or ten meetings perhaps,
20 perhaps more.

21 Q Your meetings were with Mr. Sorkin?

22 A And with Mr. Doonan or both of them.

23 Q Were the other people present from time to time

24 A I believe a Mr. Kelly and a Carl Drey or Dreyer,
25 a tall gentleman, at various times individually and col-

jqbr 2

Jerome Allen-redirect

lectively.

Q What was the substance of those meetings?

We are only interested in Training With the Pros.

Don't tell us about anything else because we don't care.

A I was to repeat precisely the nuances and the substance with my own nuances of what Mr. D'Onofrio would say.

Q Were you told what D'Onofrio would say?

Were you given a piece of paper which contained the substance of Mr. D'Onofrio's testimony?

A I read it, yes, sir. I wasn't given it.
I read it.

Q You were given, were you not, a copy of this paper, and I am going to show it to you and we will identify it by its exhibit number in a moment. Have you ever seen that piece of paper or a copy of that piece of paper?

A Yes.

Q That is Stoller Exhibit H in evidence in this case.

A I saw this or a copy of this.

Q And you were told to read it?

A Yes, sir.

Q How many times were you told to read it?

1
2 A His original statement was "I want you to write
3 in your own words what happened but be consistent with what
4 you just read."

5 Q In other words, you were given or shown a copy
6 of Stoller Exhibit H, the paper I am showing you now?

7 A Yes.

8 Q And you were told to write in your own words
9 what happened but it should be consistent with Stoller
10 Exhibit H?

11 A Yes, sir.

12 Q Did you do that?

13 A I didn't put it in writing, no, sir.

14 Q You didn't write it?

15 A I refused to. He wanted me to put it in
16 affidavit form.

17 Q And you didn't do it?

18 A No, sir.

19 Q But you read this a number of times, this
20 being Stoller Exhibit H?

21 A Yes, I read that.

22 Q I gather then that at these meetings you
23 simply went over the testimony that you would give if called
24 in Training With the Pros?

25 A Yes, sir.

Q And the substance of it was that you would give testimony consistent with what you had read in Stoller Exhibit H?

A Yes, sir.

Q And you dealt with embellishments, right?

A Yes, sir.

Q Nuances?

A Yes, sir.

Q Little bits of --

A He once said to me "Don't be too precise in your answers because it will look like you are rehearsed."

Q I want to direct your attention very specifically to a meeting at the Baur au Lac. You were asked about it on your direct. Do you remember I asked you on your direct about a meeting at the Baur au Lac in June of 1968?

A Yes, sir.

Q And you told us you were not at any such meeting?

A I didn't have travel permission, sir, no.

Q And in fact you were not in Switzerland in June of 1968?

A No. I made application July 27th to go.

Q Just answer my question.

jqbr 5 Jerome Allen-redirect

A I was not in Switzerland at the time.

Q Did you have discussions with Mr. Sorkin or Mr. Doonan or anybody else about that supposed meeting at the Baur au Lack in June of 1968?

A Yes, sir.

Q When did you have those discussions?

A Before the indictment came down.

Q When you looked at Stoller Exhibit H did you see some references in that document to such a meeting?

A That was a meeting that Ray said I was with Pfingst and Stoller and I was drinking Perrier-- he said it was June 8th or 9th. I don't remember exactly.

Q Did you direct the attention of Mr. Sorkin to the fact that you were not in Switzerland in June of 1968?

A Yes, I did.

Q What if anything did he say to that?

A He said "Well, how will the defense ever prove that you were't there."

Q During the year 1968 you were under indictment, were you not, in a case which was called United States v. Jerome Allen, 68 Criminal 29 in this court, a securities case, is that right?

A Yes, sir.

1 jqbr 6 Jerome Allen-redirect

2 Q And in that case, sir, there was an order made,
3 was there not, setting bail limits for you, where you could
4 go and where you couldn't go, isn't that right?

5 A Yes, sir.

6 Q And in order to go to Switzerland you had to
7 get an order of the Court, isn't that right?

8 A The Judge had to grant the motion, yes, sir.

9 MR. GOULD: I will now ask the government to
10 concede that in that case, according to the records of this
11 court, the first application for an extension of bail limits
12 on the defendant Allen was made on July 9, 1968 and a notice
13 thereon was mailed on July 10, 1968.

14 MR. SORKIN It is conceded, your Honor.

15 Q Go ahead, sir. After you told him that you
16 weren't in Switzerland in June of 1968 what was it he said?

17 A He said "We can blur the dates during the trial."

18 Q Is there anything else you remember about that
19 supposed meeting at the Baur au Lac?

20 A Yes, he said it was very important that I say
21 that D'Onofrio would testify that Phil Stoller complained
22 "I didn't want to cut a lawyer into the deal" while
23 Joe Pfingst went to the men's room or something and that
24 I screamed "No, let him be your partner."

25 He said please remember that but use your own

1 jabr 7 Jerome Allen-redirect
2 words.

3 Q You never participated in any such meeting, did
4 you?

5 A No, sir, I wasn't there.

6 Q Did you tell Mr. Sorkin that that was
7 a complete fabrication by D'Onofrio?

8 A Yes.

9 Q And what did he say to that?

10 A I can answer you by saying that I asked him
11 if D'Onofrio ever perjured himself in other cases and
12 he said "yes, but he is the best we have."

13 Q During the course of your cooperation with the
14 government, was any effort made to get your assistance to
15 entrap people?

16 A Yes, sir, repeatedly.

17 Q I am not going to ask you about anybody except
18 the defendant Stoller and the defendant Frank.

19 A Yes, sir.

20 Q They asked you to do things to entrap them,
21 is that right?

22 A Yes, sir. In a blue car one day Mr. Sorkin --

23 Q Please, don't volunteer.

24 A Yes, sir, they did. This is when I really
25 balked --

jqbr 8 Jerome Allen-redirect

Q We really don't want to hear that.

A Yes is the answer.

Q There came a time, Mr. Allen, when you decided you didn't want to cooperate any further with the government, is that right?

A Yes, sir.

Q When was that?

A The first time --

Q Just the time.

A In my own mind or when I expressed it to my attorney?

Q You can tell us any way you want.

A About mid-July I started getting that feeling that I only had myself respect left and I was not going to lie for Sorkin.

Q During the period from the date of your return to the United States from Switzerland and the end of August 1974, you had a lawyer, did you not, named Eric Bregman?

A Yes, sir.

Q Did there come a time, sir, when you advised Mr. Bregman that you wanted to withdraw from cooperation with the government?

A Yes, sir. He said I should write a letter to

1 jqbr 9 Jerome Allen-redirect
2 him --

3 MR. SORKIN: Your Honor --

4 Q Just yes or no.

5 A Yes, sir

6 MR SORKIN: I think we are getting into this
7 area which was objected to yesterday. Mr. Allen asserted
8 the wiaver and now Mr. Gould is going back into it again.

9 MR. GOULD: I haven't done anything yet.
10 I just asked him if he did something and he said yes.

11 THE COURT: I am frank to say that I don't think
12 we are at that point yet.

13 MR SORKIN: I thought he said he told
14 Mr. Bregman something, that he didn't want to cooperate.
15 To me that is a conversation, your Honor.

16 MR. GOULD: He answered it.

17 MR. SORKIN: I know he answered. That is
18 why I rose.

19 THE COURT: Out of caution then I should remind
20 you specifically to consider the lawyer-client privilege
21 and you said you wanted to invoke it.

22 THE WITNESS: I understand.

23 THE COURT: It isn't a two-way street.

24 THE WITNESS: I didn't know, I just answer the
25 questions.

jqbr 10

Jerome Allen-redirect

THE COURT: You want to invoke the privilege then, right?

Q Do you want to invoke the privilege about the conversations you had with Bregman in August of 1974? Yes or no?

A I don't know the law, your Honor.

THE COURT: I told you that you were entitled to invoke your privilege and not tell these lawyers anything about your conversations with Mr. Bregman, your lawyer. And you said you wanted to take advantage of that yesterday.

THE WITNESS: Yes.

THE COURT: Today you change your mind?

MR. GOULD: I think I can obviate the problem.

THE COURT: Please, Mr. Gould, I am trying to do this without any help from you, if you don't mind.

Do you understand what I just said before we were interrupted?

THE WITNESS: Once I exercise the privilege it stays that way.

THE COURT: Then we will disregard your last answer and go to something else.

MR. GOULD: Would you mark this for identification.

1 jgbr 11

Jerome Allen-redirect

2 (Defendant Stoller Exhibit AC was marked for
3 identification.)

4 Q Mr. Allen, I show you a piece of paper which
5 has been marked Stoller Exhibit AC for identification.

6 Is that your signature at the bottom there?

7 A Yes, sir.

8 Q Did you give a copy of this to Mr. Derfner who
9 is sitting over there at counsel's table?

10 A Yes, I did.

11 Q Mr. Derfner wasn't acting as your lawyer,
12 was he?

13 A No, sir.

14 Q So this is a letter you wrote to your lawyer
15 on August 22, 1974, signed it, and you gave a copy of it to
16 Mr. Derner voluntarily, correct?

17 A Yes, I did.

18 Q Do I understand that this was a letter in
19 which you instructed your lawyer as to what you wanted to
20 do --

21 MR. SORKIN: I am going to object. If this is
22 a letter to his lawyer and he gave it to Mr. Derfner it seems
23 to me he already waived his privilege.

24 THE COURT: I won't disagree but you say you
25 object. What do you object to? I have never heard

such confusion on something as simple as this.

MR. SORKIN: First he said--

THE COURT: I know what he said. What are you objecting to Mr. Gould's question about?

MR. SORKIN: My objection to Mr. Gould's question is that the way he phrased it "Didn't you say to your lawyer" or "Did you tell your lawyer" and he is trying to go into what the conversation was with his lawyer through this letter when Mr. Allen said he doesn't want to waive his communication with his lawyer. He already said this is a letter that he mailed to his lawyer.

THE COURT: He gave it to somebody else. He says he gave it to Mr. Derfner who he admits is not his lawyer.

MR. GOULD: I offer it in evidence.

MR. SORKIN: Your Honor, before I decide I want to say that if this come in then it is waived as to conversations along these lines.

THE COURT: You may well be right, Mr. Sorkin. Instead of trying to teach me some law I wish you would confine yourself to your role in this case. Do you or do you not object?

MR. SORKIN: Let me read it, please, your Honor.

THE COURT: I would agree with you that the privi-

2 lege may well be waived now that this comes out but that is
3 not our concern at the moment. We will get to that when
4 we have to.

5 (Pause.)

6 THE COURT: May I ask while they are looking at
7 this letter, Mr. Allen, when did you give that letter to
8 Mr. Derfner?

9 THE WITNESS: I believe it was August 22nd, sir.

10 MR. GOULD: That is the date of the letter.

11 MR. SORKIN: Your Honor, may we have a side
12 bar on this, please?

13 MR. GOULD: I would suggest that your Honor look at
14 the letter because it is so clearly admissible in the face
15 of what went on yesterday that I can't imagine what he is
16 worried about.

17 MR. SORKIN: What concerns me is the door
18 that is opening as a result of what Mr. Allen put in
19 that letter.

20 MR. GOULD: The door was opened yesterday.

21 THE COURT: There are some thing in here that I
22 believe you gentlemen may not have conceived of. Have you
23 seen this letter, Mr. Feldshuh?

24 MR. FELDSHUH: Yes, I have, your Honor.

25 THE COURT: I am not going to admit this letter

because I think it would be a disservice to several parties in this case and I don't just mean the government.

Furthermore, if you want to ask him about this, he has already told us so I really wonder whether it is nothing but a declaration in writing pretty much to the effect --

MR. GOULD: I think it is. The second paragraph in the second page, I am conscious of it but I thought Mr. Feldshuh would make a point.

THE COURT: I don't think that letter ought to in for a whole host of reasons. I don't know what Mr. Sorkin is objecting to.

MR. GOULD: I will withdraw it.

THE COURT: I will support him on it.

MR. SORKIN: That was it, your Honor. What your Honor referred to.

THE COURT: However, I would then say to you gentlemen that in view of these statements I cannot help but think that he waived his privilege long ago if you want to ask him.

MR. GOULD: I don't care anything further.

THE COURT: If you want to ask about selected portions of this I think you are entitled to.

MR. GOULD: I will just ask him a couple of questions.

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Q You gave that letter to Mr. Derfner, correct?

A Yes, sir.

Q And on August 22 you went to Mr. Frank's office, didn't you?

A Yes, sir.

Q And you made certain statements then?

A Yes, sir.

Q And the substance of what you said was that you had decided not to cooperate with the Government any more?

A Yes, sir.

MR. SORKIN: Your Honor, I will feel obligated to inform your Honor that I think this is opening doors that your Honor closed on the Government yesterday--

THE COURT: Mr. Sorkin --

MR. GOULD: I am a big boy. I know what I am doing.

THE COURT: -- I don't know what you are talking about. If it does, it does. I don't know what you are concerned about. I really don't. If you want to object to something, be my guest and object, and I will rule on it. This door opening exercise, I don't know what you mean.

MR. SORKIN: Then I have to object to that question and that answer, your Honor.

MR. GOULD: This is in line with the cross-

1 gab-2

Jerome Allen-redirect

2 examination yesterday as to --

3 THE COURT: Go ahead. I will overrule the objec-
4 tion.

5 Q You went there voluntarily, did you not?

6 A Yes, sir.

7 Q Nobody forced you to go there?

8 A No, sir.

9 Q Nobody told you to go there?

10 A No, sir.

11 Q Nobody paid you to go there?

12 A No, sir.

13 Q Nobody threatened you --

14 THE COURT: All right. You made the point. Next
15 question.

16 Q Did you inform the Government at or about that
17 time that you were not going to cooperate with them any
18 further?

19 A I told Mr. -- I don't know -- I don't know
20 whether I can say I told Mr. Bregman --

21 Q Did you instruct your attorney to inform the
22 Government that your period of cooperation had terminated?

23 A To move to vacate my plea, yes, sir.

24 Q All right. Now, sir, just a couple of little
25 things here. You said yesterday that you placed your
5000 shares of Training With the Pros into an account called

1 gab-3 Jerome Allen-redirect

2 Erika in Switzerland, right?

3 A Well, I sold it to the bank at ten dollars
4 and the check went through the Erika account.

5 Q In other words, is it clear that you put those
6 shares in the Erika account before you sold them to the
7 bank --

8 A Yes, sir. It has to go through mechanically that
9 way.

10 Q They were in the account before they were sold,
11 right?

12 A Yes, sir.

13 Q Now, you were asked a question on cross-examina-
14 tion about a fellow named Larry Newman.

15 A Yes, sir.

16 Q Do you remember him?

17 A Yes, sir.

18 Q He was an Assistant United States Attorney in this
19 office?

20 A Yes, sir.

21 Q Was Mr. Sorkin connected with him in any way?

22 A Yes, sir. He was a student assistant at one
23 period.

24 Q Of Mr. Newman?

25 A Yes, sir, he sat opposite Mr. Newman when Mr.

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gab-4

Jerome Allen-redirect

1 gab-4
2 Newman quizzed me.

3 MR. GOULD: I have no further questions.

4 MR. FELDSHUM: I have no questions, your
5 Honor.

6 THE COURT: All right.

7 MR. SORKIN: Your Honor, before the witness is
8 excused we reserved the right --

9 THE COURT: I didn't say that he was excused.

10 MR. SORKIN: Would your Honor like us to present
11 our argument at this time?

12 THE COURT: All I want to know is the case.

13 Do you have any recross of this witness?

14 MR. SORKIN: I do not, your HONOR. We do have
15 a case or two or three.

16 THE COURT: You mean you have no recross other
17 than this subject?

18 MR. SORKIN: No, your Honor.

19 THE COURT: All right. Why don't you just
20 hand me the case.

21 MR. GOULD: I, too, have a case, your Honor.

22 THE COURT: Ladies and gentlemen of the jury,
23 in view of this development I don't want you up unnecessarily
24 and I am going to ask you to go out to lunch and we will
25 resume at -- it is now 12:25. We will resume at 1:45.

gab-5

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(Jury left the courtroom.)

MR. GOULD: Your Honor, I don't have a book to hand up because I don't have one available.

Can I give the Court a citation to a case that I think is authoritative?

THE COURT: Right.

MR. GOULD: I think that the subject is treated at great length in the American Bar Association's project and standards for criminal justice, the volume on the prosecution function and the defense function.

There is a substantial note on that in Section 5.7(c).

THE COURT: I don't have that volume, sir.

MR. GOULD: I will lend the Court the volume.

THE COURT: Is that the citation?

MR. GOULD: No, I am going to give you the case that is cited in there.

THE COURT: Fine.

MR. GOULD: I don't want to pretend to the kind of scholarship that I haven't got. We had to do this fast.

THE COURT: What is the case?

MR. SORKIN: Your Honor --

MR. GOULD: I think there is a change in their position.

1 gab-6
2 MR. SORKIN: Your Honor, I didn't research it,
3 Mr. Lowe did. I think Mr. Lowe is better qualified to
4 state the Government's position with respect to Mr. Allen.

5 THE COURT: Wait a minute. I am trying to get
6 a case from this gentleman. That is all I am trying to do.

7 MR. GOULD: Let me tell you what just transpired.
8 I was addressing you, your Honor, on the subject of
9 whether the Government could require him to assert the Fifth
10 Amendment privilege in the presence of the jury.

11 THE COURT: Right.

12 MR. GOULD: I think your Honor understood that
13 to be the problem.

14 THE COURT: Right.

15 MR. GOULD: I am now informed that they are not
16 taking that position, that they are taking a different
17 position so that the case I am talking about has nothing to
18 do with the facts. I have to find out what they are
19 talking about first.

20 THE COURT: Mr. Sorkin, you are consistent to
21 the end.

22 MR. SORKIN: Your Honor, I am sorry. I did not
23 mean to disturb the Court. We were hit with an issue this
24 morning during trial --

25 THE COURT: No, no. I know you were hit with

1 gab-7

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2 an issue. I gave you time. . I thought that was what we
3 were talking about.

4 MR. SORKIN: I was going to say it before
5 Mr. Gould offered his statement, your Honor. That is why we
6 interrupted him from giving your Honor the case because that
7 is not our position.

8 THE COURT: Let's start back at Square I. What
9 is your position?

10 MR. LOWE: If your Honor will permit, because of
11 the fact that I did the research for Mr. Sorkin, he would
12 like me to state our position and I would be happy to do
13 so, if your Honor will permit.

14 THE COURT: First of all, just enlighten me
15 as to what is going on.

16 MR. LOWE: Well, your Honor, the facts are that
17 Mr. Allen called as a witness for the defense took the stand
18 and testified regarding the issue of the payment of \$15,000
19 to --

20 THE COURT: Mr. Lowe, please. I have been sitting
21 here. I know that.

22 Here is my problem. I asked or rather at the
23 request of the Government and with my acquiescence, which was
24 happily given, I thought the issue we were going to consider
25 was whether or not they could ask him this question and he

1 would plead the Fifth Amendment.

2 You have to help me. Now apparently we are
3 talking about something quite different. Just tell me
4 what are we talking about?
5

6 MR. LOWE: The Government's position, your
7 Honor, is simply that Mr. Allen cannot properly plead the Fifth
8 Amendment to the question Mr. Sorkin put to him having waived
9 that privilege by testifying about that subject both on
10 his direct and on his cross prior to his assertion of the
11 privilege to the specific question asked.

12 I am prepared to discuss it at further length if
13 your Honor desires.

14 THE COURT: I would agree with you as a general
15 proposition. I have no quarrel with what you said.

16 Circumstances alter cases in our tattered pro-
17 fession and there was no reference on direct or cross to the
18 transcript of the overhear planted on the witness' plump little
19 bosom in the office of Mr. Frank.

20 So you lose me.

21 MR. LOWE: Your Honor, he did testify on direct
22 specifically that there was no meeting with Mr. Frank at
23 which Mr. Frank -- I will refer your Honor to Pages 2456
24 and 2457 of the transcript in which the following question
25 and answer was given:

1 gab-9
2 "Q It has been claimed in this case by a witness
3 that Franksaid at that meeting" -- and this is a meeting
4 back in November of 1968 -- "that the deal should have been
5 done in a different way through the use of nominees or the
6 deal should be done in a different way through the use of
7 nominees and that he, Frank, wanted \$15,000 plus a thousand
8 shares. Did anything like that take place?

9 "A No, sir."

10 Then further on in his cross-examination, your
11 Honor, it is my understanding that Mr. Allen was asked whether
12 or not he paid any \$15,000 to Mr. Frank in connection with
13 this deal and denied it.

14 THE COURT: So far you are absolutely right. At
15 least that is my recollection.

16 MR. LOWE: And immediately prior to the question
17 to which he took the Fifth, Mr. Allen stated this morning,
18 I believe, although I was not here, so I can't speak of my
19 own knowledge --

20 THE COURT: You are doing fine. I agree with
21 everything you say on this.

22 MR. LOWE: I believe this morning he said that
23 he had never had any conversation with Frank in which the
24 subject of paying \$15000 to Frank was discussed.

25 MR. SORKIN: Your Honor, yesterday, too, on

gab-10

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Page 2749, the question was asked on cross:

"Q Did you ever have a conversation with Mr. Frank where you told him that you had transferred 15,000 from your account Erika to Account Lance?

"A No."

That refers to other parts of that transcript.

THE COURT: Mr. Sorkin, I will accept this, too. But you are missing the point. I know you have reason to believe that it is a false answer. I don't blame you for that. I would be willing to agree it may be, too, along with a whole lot of other answers this witness has given. This doesn't meet our problem.

This morning you confronted him with a page of the transcript of the overhear in Mr. Frank's office, correct?

MR. SORKIN: Yes, your Honor.

THE COURT: It was in respect to that that I on my own motion cleared the courtroom of the jurors and advised him that his statement to the effect that he couldn't recollect anything like this and that this doesn't refresh his recollection might well make him vulnerable to a charge of perjury.

There is a lot of other things that he has done that may make him vulnerable. This one I had a duty to speak to because I heard the tape. As to the rest I couldn't say.

1 gab-11
2 This doesn't do any good at all. I don't
3 understand. You are claiming he waived the privilege gener-
4 ally.

5 MR. SORKIN: That is correct.

6 MR. LOWE: Your Honor, with respect to that sub-
7 ject matter, and I think I might point to a specific case
8 which we have handed up to your Honor, case of Brown against
9 United States -- in that case a person took the stand volun-
10 tarily, testified as to certain subjects and then refused to
11 answer questions on cross-examination regarding matters which
12 were clearly related but not exactly the same.

13 The person was held in contempt and the contempt
14 was sustained by the Supreme Court of the United States.

15 MR. GOULD: Was that a witness or a defendant?

16 MR. LOWE: It was a defendant in a denaturalization
17 proceeding.

18 In another instance, your Honor --

19 THE COURT: In Brown you are quite correct, though.
20 They did talk about a witness as well as a defendant witness.
21 I still don't get your point because, you see, what happened
22 yesterday is that he wasn't asked anything specifically
23 having to do with what Frank told him. True, it was skirt-
24 ing around it, I recognize that.

25 MR. LOWE: Your Honor, it is grossly unfair to

1 gab-12

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2 suggest that by a skirt that the defense in this case could
3 avoid having Mr. Allen forced to answer a question --

4 THE COURT: Wait a minute. I am not talking
5 about the defense, I am talking about Allen. Both your
6 friend Sorkin and your friend Gould asked him about this, it
7 is true, I mean around the periphery. The rhetorical over-
8 kill in this case has been overflowing, Mr. Lowe. Don't add
9 any more to it, please.

10 MR. LOWE: I apologize, your Honor.

11 THE COURT: We have had enough of that.

12 I see your point and that is very troublesome.
13 This witness in my opinion is getting away with a great
14 deal here.

15 MR. LOWE: May I suggest, your Honor, that I
16 direct your Honor's attention to the other case we handed up
17 from the District of Columbia Circuit, the name of it escapes
18 me. You have our book.

19 THE COURT: Pressor. I do.

20 MR. LOWE: In Pressor, your Honor, the witness
21 appeared before the Congress or committee of the Congress
22 and was asked questions with respect to whether or not he
23 had complied with a subpoena. He said, "I did."

24 He was then asked a question, "Subsequent to
25 receiving the subpoena did you destroy any records?"

1 gab-13
2 And he refused to answer citing his Fifth
3 Amendment privilege. He was held in contempt of Congress --

4 THE COURT: Look, I agree with you. Again, let
5 me put this in focus for you. Ordinarily I could see some
6 point in your argument because I think there is a lot of force.
7 I don't believe Mr. Allen, as I made quite clear to you now,
8 in a number of respects and I think here he has been playing
9 really fast and loose with us. But we have the problem
10 of a defendant on trial named Frank, and unfortunately
11 that answer in my opinion puts Frank right in the soup on
12 the counts in which he is here a defendant on.

13 It is not quite as simple as you might make it
14 seem.

15 MR. LOWE: I believe your Honor is directing
16 us to an issue that I hadn't addressed myself to.

17 THE COURT: I am not blaming you, sir.

18 MR. LOWE: Your Honor is suggesting I believe
19 that perhaps the question is objectionable in itself, and
20 should not be answered --

21 THE COURT: I am suggesting two things.

22 First, there is the approach that you argue for
23 and which I can see some merit, that maybe he said enough
24 to waive his Fifth Amendment privilege. I consider that
25 standing alone a very close question because what was asked

1 gab-14
2 him yesterday and so on and so on really isn't quite as
3 specific as what he was asked this morning by anybody.

4 Second of all, I am concerned with quite a
5 separate problem, at least for discussion and analytical
6 purposes, although the two tend to merge a bit as a practical
7 matter, and that is the answer that he should, if he were
8 truthful, give, would really implicate Frank.

9 Certainly I would have no trouble if I were
10 the trier of the facts in saying you admit it all in one
11 nice little sentence.

12 MR. LOWE: Your Honor, I wonder --

13 THE COURT: In order to go forward you would be
14 asking this Court to make a very close determination of
15 waiver and at the same time go careening into the problem of
16 Mr. Frank's rights under our --

17 MR. LOWE: I wonder, your Honor, if it is appro-
18 priate to consider that, as I understand it, this witness has
19 testified and given evidence which, if believed, would
20 exculpate both of the defendants in this case.

21 THE COURT: Has he ever. According to him they
22 have never done anything but go to church for their whole
23 lives.

24 MR. LOWE: Your Honor, is it entirely appro-
25 priate that the defendant Frank or the defendant Mr. Stoller

1 gab-15
2 should be allowed to benefit from this testimony which
3 can be proved perjurious?

4 THE COURT: Mr. Lowe, the problem is that that
5 gets us into two things.

6 One, this is my point when I say what was asked
7 of him yesterday was not really on the money like what
8 happened this morning.

9 MR. LOWE: I understand that, your Honor. It
10 certainly is close enough. It is an appropriate cross-
11 examination question.

12 THE COURT: I am quite outspoken on what I think
13 of some of our rules because we have come around in full
14 circle. That happened long ago. That is not Mr. Frank's
15 fault or Mr. Allen's fault. We are down to where we are
16 quite clearly favoring an individual as against society
17 in these matters, but we made that determination. Greater
18 minds than yours and mine have done that. That is not the
19 point.

20 Look, I haven't been bemused since this case
21 started, you know. I know what is going on around here
22 pretty well.

23 That is one of my agonies. I have to be a
24 lawyer and a Judge, not a fact finder.

25 These people ask for a jury trial and I have

1 got to keep the trial as free of error as I can, and believe
2 me it has been a hard task here in recent weeks.
3

4 I repeat it again for you. I understand your
5 point. What bothers me is that I am not sure this
6 gentleman waived his privilege in what he was asked yester-
7 day because what happened today is very specific. There-
8 fore, is it wise for a Trial Judge in the few seconds allotted
9 to him during a difficult trial like this where there have been
10 ruling about every thirty seconds now for day, to suddenly
11 conclude that cases like Pressor and Brown, which are not
12 factually in point at all, are controlling here? That is
13 what worries me, although I see the point.

14 Obviously they are relevant in the general sense.

End 8

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t9 am

MR. LOWE: I am a little bit at a loss because, as I say, your Honor, I haven't heard all of the testimony.

THE COURT: I appreciate that. I am not badgering you for that.

MR. LOWE: I believe Mr. Allen has, among other things, denied paying \$15,000 to Mr. Frank.

MR. GOULD: That is not so. If we are going to get new lawyers in the case --

MR. LOWE: I am asking a question, Mr. Gould.

MR. GOULD: Why do we have to stand here while he educates himself at our expense? That is not so.

THE COURT: It isn't so in certain respects. The testimony of D'Onofrio, the government's leading witness, isn't even to that effect. The payment come from other sources. Therefore, Allen was completely within his rights in saying that, as I understand the proof in this case, and I doubt that even Sorkin can fault me on that.

Isn't that so, Mr. Sorkin?

MR. SORKIN: That is true, my recollection is that D'Onofrio said that Frank did not know he got 15,000.

THE COURT: I really don't think this man has waived his privilege.

1 jqbr 2

2 MR. LOWE: I can't argue on the facts.

3 THE COURT: I know you can't. I feel sorry
4 for you. I want to protect you against this. Don't think
5 I am criticizing you at all. I am trying to say that that
6 is my point. I don't really think that what happened this
7 morning can be compared to these other allusions which you
8 quite accurately recited.

9 MR. LOWE: Might I ask this question: In
10 the event that Mr. Sorkin were able to point to a specific
11 question and answer or series thereof on the direct
12 examination of Mr. Allen and then point to a specific
13 statement on the transcript --

14 THE COURT: Let me suggest something. I think
15 this is what you are saying and I was about to come up with
16 this idea myself. My experience in this case has been
17 that Mr. Sorkin does not really have much chance to read the
18 transcript each evening or he doesn't, one or the other.
19 In fairness to him or more properly to the United States
20 Government which he represents, I would be glad to have the
21 government go through the record of yesterday and compare it
22 with this morning. After all, Jerome Allen is peculiarly
23 under control of this court and if he doesn't know it
24 by now believe me, we will have no trouble getting him
25 back.

jqbr 3

MR.SORKIN:This is what Mr. Lowe is referring to.
We got one there on cross --

THE COURT: Mr. Sorkin, I don't want rhetoric
from you. I am trying to be fair from you, sir.
Please, use your head, will you? You always want to sub-
stitute things. You defeat me in more ways than one.

Listen to me. I will give you an opportunity to
check into this after we finish today or if you want
over the lunch hour. But my recollection of the evidence is
that he really did not waive his privilege. Second of
all, I am very concerned about Mr. Frank because the key
to that whole transcript is that one statement of Frank's.
I told you when I ruled that out that I recognized then that
it would be a very stupid fact finder indeed which didn't
get the point of that admission in this case. I know that.
But that is not the way we determine rules of evidence,
by the juiciness of what the evidence is. I am sorry
but the American system is to the contrary.

I repeat: Take your time. I will permit
you to do this.

We will excuse the witness subject to recall.
We will have the esteemable Mr. Pfingst, whom you still
want to call Judge Pfingst? You still want to call him
Judge Pfingst?

1 MR. GOULD: I called him Judge Pfingst?

2
3 THE COURT: I warn you right now, I do not
4 believe of ex judges being called Judge in a courtroom.

5
6 MR. GOULD: I never called him Judge Pfingst.

7 THE COURT: I am quite serious. I do not believe
8 in this business. I am sure outside of the courtroom,
9 fine. But in the courtroom there can only be one judge,
10 not just for my amour propria but because I really be-
11 lieve in the system.

12 We will adjourn for lunch and if I am wrong
13 about this you can show me.

14 But I don't want your recollection. It may be
15 as faulty as mine. That is all I am saying.

16 MR. SORKIN Very well.

17 MR. GOULD: We understand that we are going to
18 resume at a quarter of 2.

19 MR. SORKIN: Five of two.

20 THE COURT: A quqrter of two.

21 MR. GOULD A quarter of two or as soon thereafter
22 as we can get back.

23 THE COURT: Let me give you back these cases,
24 Mr. Lowe, so you can keep them handy in case we get into
25 them again.

1 iqbr 5

2 MR. TURCHIN: As I understand it, Jerome Allen
3 is excused at this point?

4 THE COURT: Yes.

5 But tell him he has to be prepared to come back.

6 MR. TURCHIN: If Mr. Sorkin gives me a call
7 I will have him here, your Honor.

8 THE COURT: Many thanks.

9 (Luncheon recess.)
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AFTERNOON SESSION

1:45 p.m.

(In open court; jury present.)

J E R O M E A L L E N, resumed.

THE COURT: Gentlemen, I thought we understood we had no more questions at this time.

MR. SORKIN: Subject to our reserving our rights, your Honor.

THE COURT: Perhaps your lawver misunderstood, Mr. Allen.

You are excused. It may be that we will have to recall you, but it will be our obligation.

THE WITNESS: May I sit out here the rest of the day?

THE COURT: You don't have to. You can go now.

(Witness excused.)

J O S E P H P F I N G S T, called as a witness on behalf of the Defendant Stoller, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. GOULD:

Q Mr. Pfingst, during the year 1968 and '69 you were a practicing lawyer in the State of New York, correct?

1 gabr 2 Pfingst-direct

2 A That is correct.

3 Q During that period did you have a client named
4 Ramon D'Onofrio?

5 A I did.

6 Q During that period, sir, in connection with your
7 representation of Raymon D'Donofrio, did you make a trip or
8 trips to Switzerland?

9 A I did.

10 Q I direct your attention, sir, to the month of
11 June 1968.

12 Did you go to Switzerland during that month?

13 A I did.

14 Q Did Mr. D'Onofrio go with you?

15 A He did.

16 Q Did there come a time during the month of June
17 1968 when you and Mr. D'Onofrio were at Baur au Lac Hotel
18 in Zurich, Switzerland?

19 A We didn't stay at the Baur au Lac Hotel.

20 Q But you were at the premises of the Baur au Lac;
21 is that correct?

22 A There were two trips in June. The first trip
23 I made to Switzerland of any kind, nature or description
24 whatsoever was made on or about June 6th. It was the
25 second trip to Switzerland that was made on or about June

1 gabr 3 Pfingst-direct

2 29th. I don't know which trip you are referring to now.

3 Q I see. I didn't realize there were two trips.

4 On the June 6th trip did Mr. D'Onofrio accompany
5 you?

6 A He did.

7 Q And during that trip did you go to the Baur au
8 Lac?

9 A I can't really recall whether I did or not. It is
10 possible. I can't really recall.

11 Q During the second trip did you go to the
12 Baur au Lac with Mr. D'Onofrio?

13 A On either one of the two, yes.

14 Q I see.

15 Before we get to that meeting, did there come
16 a time, sir, when you heard of a company which later became
17 known as Training With the Pros?

18 A What point in time are you referring to?

19 Q Any time during the year 1968.

20 A Yes, there came a time when I did.

21 Q Was that before or after your trips to
22 Switzerland in June of 1968?

23 A My best recollection is it was after. It was
24 in the summer of 1968 that I first became apprised that there
25 was a company named Training With the Pros.

1 gabr 4 Pfingst-direct

2 Q And that would be subsequent to the time you
3 went to Switzerland with Mr. D'Onofrio?

4 A It was certainly subsequent to the first trip.
5 It is questionable in my mind as to whether it was sub-
6 sequent to the second trip, but I suspect it was.

7 Q That is your best recollection?

8 A My best recollection is the first time I heard
9 about Training With the Pros was in July of 1968.
10 I could possibly be mistaken on that by a few days either
11 way.

12 Q Now, sir, go back to this visit to Switzerland
13 in June of '68.

14 A You are talking about visit No. 1 now; is
15 that correct?

16 Q Whenever it was that you went to the Baur au
17 Lac.

18 A You are asking questions in a way I find difficult
19 to follow, Mr. Gould.

20 Q I understand. I am sorry. Let me try a
21 different way.

22 Did there come a time, sir, when in Switzerland
23 you encountered Mr. Stoller?

24 A I went to Switzerland for the first time on
25 June 6th. I went with Mr. D'Onofrio. Mr. Stoller accompanied

1 gahr 5 Pfingst-direct

2 us to Switzerland on that trip.

3 Q Correct. That was June 6th?

4 A That's correct.

5 Q During that trip was there any mention of a company
6 which later became known as Training With the Pros?

7 A No, there was not.

8 Q Even the faintest reference to it?

9 A My best recollection is I had never heard the name
10 of the company at that time.

11 Q Did you go to the Baur au Lack with Mr.
12 Stoller or meet Mr. Stoller at the Baur au Lac?

13 A It is possible we had a drink at the Baur au
14 Lac. I really don't recall.

15

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1 gab-1 Pfingst-direct 2980
2 Q Did there come a time, sir, when you met both
3 Mr. Stoller and Mr. Allen at the Baur au Lac?

4 A On one occasion, yes.

5 Q Do you remember that occasion?

6 A I remember having met both of them at the Baur au
7 Lac, yes.

8 Q During that occasion was there any discussion of
9 Training With the Pros?

10 A Not that I recall. Incidentally, that occasion
11 was not either one of the two occasions we have just dis-
12 cussed.

13 Q I see. It was some time different from June
14 of 1968.

15 A I made three trips to Switzerland on behalf of
16 D'Onofrio. The first trip was made on or about June 6 of
17 1968. That was the Hollister transaction.

18 The second trip I made was on or about June 28
19 or 29 of 1968. That was the Consair transaction.

20 The third trip to Switzerland that I made was
21 on or about July 23 of 1968, and that dealt with the AKE
22 Electric transaction. You can't mix them all up. You
23 have to treat them separately. I did meet briefly on the
24 terrace of the Baur au Lac Hotel with Mr. D'Onofrio, Mr.
25 Stoller and Mr. Allen. I believe that meeting took place

1 on July -- on the July 23rd trip.

2
3 Q At that meeting was there any discussion of
4 Training With the Pros?

5 A It is conceivable if Training With the Pros -- if
6 I had known about it at that time -- if I represented Training
7 With the Pros by that time, it is conceivable that it was
8 mentioned, yes. I can't say there was or there wasn't.
9 I really don't know.

10 Q As you sit here now you have no recollection of
11 any discussion, specific discussion of Training With the
12 Pros at that July meeting?

13 A None whatsoever.

14 Q Or at either of the June --

15 A That is correct.

16 Q All right. Now, sir, do you recall going with Mr.
17 D'Onofrio to Switzerland and discussing with him Training with
18 the Pros on the airplane?

19 A No.

20 Q Let me tell you, sir, there has been some testi-
21 mony in this case that at one time in June of 1968 you went
22 to Switzerland with Mr. D'Onofrio, and I will read you the
23 questions and answers:

24 "Q Tell us, please, what you said to him and what
25 he said to you," You are the person that he is talking

1
2 about.

3 MR. GOULD: I am reading from Page 136 of the direc.
4 testimony, of Mr. D'Onofrio.

5 "Q Tell us, please, what you said to him and what
6 he said to you.

7 "A We talked -- I first spoke to him about the securit,
8 transaction we were going over on, and that conversation was
9 quite extensive, and just rhetoric passed between us on that
10 security.

11 "Q Was there any mention of Training With the Pros
12 in that conversation?

13 "A When Mr. Pfingst said to me, have you talked to
14 the boys -- he called Mr. Allen and Mr. Stoller the boys --
15 that was his vernacular or words when referring to them.

16 "I said no, I have not spoken with the boys about
17 Training With the Pros, which I want you to understand is still
18 M & H Studios, but I am referring to it as Training With the
19 Pros."

20 Did you have any such conversation with him on
21 the way over to Switzerland?

22 A I did.

23 "Q Go ahead," said Mr. Sorkin.

24 "A He said why not, Ray?" You, this is.

25 A I am sorry, why not what?

1 gab-4 Pfingst-direct 2983
2 Q I will give you the whole answer.

3 "A He said why not, Ray? I said, you don't under-
4 stand Phil and Jerry. Their minds are directed in one
5 direction.

6 "We are going over to Switzerland to close a deal
7 and pick up a bundle of money. I said they are concentrating
8 on that. We have another deal in the hopper, which we are
9 working on.

10 "So their minds are now -- we are closing one deal
11 on our way to Switzerland, another deal they are working on
12 that is in the hopper.

13 "I don't think their minds are expanded enough
14 to think three deals at one time, I said, especially Phil.
15 Phil is not -- not that he is not capable, he can think of
16 20 deals, but he would not think of in this case talking
17 about another deal while we are closing one, one is in the
18 hopper and we are going to put another deal in his head.

19 "He says, I think you are wrong.

20 "I said, Please, Joe, I know the boys a lot longer
21 than you have and there isn't a way in the world, Joe, that
22 I could bring this subject up to them. Number 1, I am
23 a promoter.

24 "Number 2, I am a manipulator.

25 "Number 3, I am everything you want to call and

2 these boys recognize me as such also.

3 "So it is a con man conning another con man.

4 "I said, how am I going to con them into three
5 deals when we are closing one and one is ready to go?

6 "He says, why don't we" -- that is you -- "use a
7 different approach?

8 "I said, excuse me just a second.

9 "He says, I am a lawyer." This is you.

10 "He says, "I am a lawyer. Suppose I bring the deal
11 up. He says" -- this is you -- "He says, you and I play Hecke
12 and Jeckel and you act like you never even knew I was bringing
13 it up. When we get to Switzerland at the right moment, at
14 the right time -- make sure the right moment is after we closed
15 our deal and collected our money. Any time prior to that
16 will not be the right moment.

17 "I said, but I have no objections against playing
18 Heckel and Jeckel.

19 "He says, in fact they will be a little bit
20 stupid by the fact that you didn't mention it to them and
21 here I am going to be telling them as your lawyer for the
22 company, and they will say maybe you are holding out a
23 good deal back on them, and you want to give it to someone
24 else instead of them.

25 "I say s, I buy the Heckel and Jeckel idea. I

1 think it is a good idea and we will play the game that way."

2 Did you ever have any such conversation with
3 D'Onofrio?
4

5 A Absolutely not. It is an absurdity. The idea
6 that a man should recall such a conversation, alleged
7 conversation after six years --

8 MR. SORKIN: I will object to that, your Honor.

9 Q You just didn't have any such conversation?

10 A It is absurd, completely absurd. It is an
11 invention. Incidentally, I never went to Europe to meet
12 either Phil Stoller or Jerry Allen. I told you I met them
13 once, but that is not how the meeting came about.

14 Q Thank you, Mr. Pfingst. We will come back to that.
15 I just want to get a few little things first.

16 Now, there is testimony in this case, which I am
17 going to read to you, sir, from Mr. D'Onofrio, and this is
18 Mr. Sorkin interrogating that gentleman:

19 "Q Mr. D'Onofrio, when you got to Switzerland, did
20 there come a time when you met Mr. Stoller, Mr. Allen, Mr.
21 Pfingst at a hotel called the Baur au Lac?

22 "A Yes, there did."

23 Then he is asked about a conversation and this is
24 his answer -- he says present with Mr. Stoller, Mr. Allen, Mr.
25 Pfingst and himself, D'Onofrio. Let me read you what he

1 says:

2 says:

3
4 "A We were sitting at the Baur au Lac Hotel, out on
5 a veranda, underneath a California redwood tree, and we
6 sat down, Joe ordered a Perrier," and so on. I will leave
7 out the rest.

8 "Q Did the subject of Training with the Pros come
9 up?

10 "A Yes.

11 "Q Tell us what was said and by whom." This is
12 D'Onofrio's answer.

13 "A Mr. Pfingst, while the four of us were sitting
14 there, looked and referred to Mr. Allen, and he said, Jerry
15 have you heard about Ray's new deal, Training with the Pros?

16 "Jerry said no, I haven't heard about it.

17 "He said," -- that is you -- I't a fantastic new
18 deal and I would like to tell you a little about it.

19 "He says, "Ray why didn't you tell him about it?

20 "I said, Joe, I have been so darn busy I haven't
21 had a chance.

22 "Phil interrupted the conversation by saying,
23 "I don't want to hear about any new deals, I have no interest
24 in new deals at all.

25 "Jerry Allen says, Phil, let the guy speak his

1 piece, let him finish. Maybe they have something we can
2 look at here.
3

4 "So Phil said, go ahead, Joe, I'm listening.

5 "Joe" -- that is you -- "proceeds to reiterate what
6 I have reiterated to you, the hands on program, the vocational
7 rehabilitation, and Jerry enthusiastically proclaims that
8 it sounds like a very hot deal because education, and
9 especially vocational education is on the minds of people today
10 and it should be very easy.

11 "He said, what is the name of the company?

12 "Joe says, M & H Studios.

13 "He says" -- that is Allen -- "Oh, My God, what
14 a name. You have to change the name. In a name there
15 is 50 points."

16 Did you ever have a conversation like that?

17 A I don't recall any conversation like that. I
18 have had conversations about Training with the Pros dealing
19 with the nature of the business that they were involved in
20 which was vocational rehabilitation and I have used that
21 expression, but the conversation that you are relating right
22 now, no, I have no recollection of such a conversation.

23 Q It never happened, did it?

24 A No.

25 MR. SORKIN: Objection, your Honor. He said he

1 didn't recall it, not that it never happened.

2
3 MR. GOULD: I will ask him again, your Honor.

4 Q Is it your testimony, sir, that such a conversa-
5 tion never took place?

6 A Yes, that is my testimony.

7 Q Next question, and I am reading to you, Mr.
8 Pfingst, from the works of Mr. D'Onofrio.

9 "Q What does points mean? " This is still talking
10 about the same conversation.

11 A This is the same conversation?

12 Q The same one.

13 "A A point means \$1. Ten points would be \$10; fifty
14 points, \$50. What he was saying was there are 50 points
15 in a name so that if the name of the company is M & H
16 Studios, it could be worth a dollar, if it was Kinematics
17 or Kinectics, which he suggested, it could be worth \$51
18 a share, because the name is glamorous. The public was buy-
19 ing names, not substance.

20 "Joe asked me was the name capable of being
21 changed, which was our Heckel and Jeckle act, and he knew I
22 could change the name because I owned a third of the company
23 and I said of course we could change it.

24 "Phil said, how much of the stock could we get?

25 "So Joe looks at me without answering, because

1 it was directed at Joe, and said, how much do you think
2 we could get?
3

4 "I said, as much as we want.

5 "Phil says, 'how much are you coming out with?

6 "I said, I am doing a Reg. A offering and I am thinking
7 of 100,000 shares of stock at \$3 a share or \$2 a share stock,
8 but certainly it is a low price stock.

9 "Phil says, you don't know the game yet, you have
10 to have a thin float, you have to have very little shares.
11 There are two reasons. If we are going to get involved and
12 I am not saying we are going to, first the stock has to be
13 over \$5, because (a) major brokerage firms, like duPont,
14 Bache and so forth will not buy stocks that are under \$5.

15 "You are going to have to think of having like
16 50,000 shares at \$6 or less shares at \$7 or whatever number
17 we decide. Can you arrange that?

18 "I says, Phil, I can do anything you want. If you
19 want 50,000 at 6 or 40,000 at 7, you name it and that
20 is what we will do. He says, suppose we had 40 or 45,000 at
21 7, how much could we get?

22 "I said at least 25,000 shares, I think.

23 "Phil turned to Joe and says, how would we handle
24 it?

25 "And Joe says, we handle it the same way we are

1 presently intending to handle another stock we are working
2 on, and that would be that the bank would give an indication
3 letter for 25,000 shares and the bank would subscribe to
4 the stock, pay for it in the United States, and it would be
5 funneled into each of our secret Swiss accounts for the
6 benefit of ourselves.
7

8 "Joe says, I have worked out those things anticipating
9 already that we can do it in this fashion.

10 "Phil was doing jotting on paper and he says,
11 Jerry, I have a brilliant idea, and Jerry says, what is it?

12 "He says, we could slow this stock off to Muir
13 and Joe," meaning Muir Weissinger and Joe Bonavia."

14 Did you ever have a conversation --

15 A It is pure invention. Never did I participate
16 in any such conversation, never, either in Switzerland or
17 in America or anywhere else.
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Pfingst-direct

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Q Let me go on.

"Q What was the rest of the conversation" -- the same conversation, the same time, the same place --

"Q What was the rest of the conversation?

"A He said 'We could blow it off to them at 50,000 a share if they have an awful lot of money in their accounts from the previous deals.' I said"-- I is D'Onofrio --" 'What happens when they get it? We would have to recuse them, I would have to do some work, bring in some mutual funds, some other member firms.' Phil says 'Don't worry, we can use some Elinors.' He used the word plural and I don't know why."

Did you ever hear anything like that?

A No.

Q In this conversation, sir, and I apologize for the qualify of the prose as I read it to you, but that's how it was given, was the following discussed:

"Q Have you ever heard that term Elinors prior to this time"?

A I dn't know what you are talking about right now.

Q I know you don't. It is part of the question and I must read it to you.

"Q Have you ever heard that term Elinors prior to

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Pfingst-direct

2 this time?

3 "A No, sir. Jerry Smith had some people that he
4 could possibly solicit. He talked about a research
5 analyst that he could talk it up with and we figured we could
6 get Muir Weissinger and Joe out after we gave it to them
7 \$50 a share and bought it at 6 or 7, that we could get
8 them out there later. Phil says" -- and this is the part
9 I am interested in -- "Phil says 'I really don't want to hear
10 now about Muir and Joe. Fuck them, they are just a bunch of
11 pigs. Murray never bought me a dinner in all the years
12 I have been with them. I don't give a shit whether we get
13 them out or not.' I said 'Phil, that is your opinion.
14 I would like to save them again for a rainy day,' and
15 Jerry says 'Yeah, you don't want to kill the goose that
16 laid the golden egg.'"

17 Did you ever hear anything like that?

18 A No.

19 Q Anything remotely like that?

20 A Nothing even remotely like that.

21 Q "Q Was there anything else said in the
22 conversation?

23 "A At that point, when you interrupted me, Phil was
24 saying 'I don't give a shit about take them out. For
25 a million dollars, I will sell shit. This works out to a

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Pfingst-direct

2 cool million bucks, the way I look at it. What are the
3 partners in the deal' I said, 'Well, you are seeing them,
4 the four of us, meaning Mr. Pfingst, Mr. Allen, Mr. Stoller and
5 myself.' Phil said 'Joe, would you mind leaving the table
6 for a couple of minutes?' and Joe didn't mind. He walked
7 along the patio."

8 Did you ever hear anything like that?

9 A This is the first time I am hearing anything
10 even remotely resembling that.

11 Q Did you ever participate in such a conversa-
12 tion?

13 A No, not at all. This is pure invention.

14 Q Mr. Pfingst, I would like to show you, sir,
15 a document marked as Government Exhibit 4 in this case.
16 It will be immediately apparent to you what it is.

17 Will you just look at it.

18 Have you ever seen that page --

19 A Just a minute.

20 Q Excuse me.

21 a No, I have never seen it.

22 Q Did you participate, sir, in any way in the
23 drafting of that paper?

24 A No.

25 Q Did you have anything to do with the preparation

1 jghr 4 Pfingst-direct

2 of that paper whatsoever?

3 A No.

4 Q There has been testimony in this case --

5 THE COURT: What is the exhibit number?

6 MR. GOULD: Government 4, your Honor.

7 THE COURT: Thank you.

8 MR. GOULD: We have called it the indication
9 letter from time to time.

10 THE COURT: All right.

11 Q Well, sir, there has been testimony in this case
12 by Mr. D'Onofrio. He was shown this paper, Government Exhibit
13 4, and he says, he is asked:

14 "Q Where did you first see it?

15 "A I was present at the drafting of it on a yellow
16 tablet piece of paper in August of 1968 when Joe Pfingst
17 and I were in Switzerland and Joe wrote the letter."

18 A I was never in Switzerland in August 1968.

19 Q Did you have anything to do with writing such
20 a letter on a yellow tablet or anything else?

21 A No.

22 Q Then there is testimony in this case:

23 "Q When was the next time you saw it?

24 "A The next time I saw it was around October 13th
25 or 14th or 15th of 1968 when Mr. Pfingst and I were visiting

jqbr 5 Pfingst-direct

Switzerland and we had it typed up in Switzerland."

A That is false.

Q That is false testimony?

A That is right.

Q There is testimony as follows in this case,
again from Mr. D'Onofrio:

"Q Mr. Pfingst, we talked about him a little. Did
Mr. Pfingst stick you for \$400,000?

"A About 300 some odd thousand dollars.

"Q Did you tell that to people, that Pfingst stuck
you for \$400,000?

"A I told that to his attorney, Mr. Marcheso in
the courtroom, that he had stuck me for 300 some odd thousand
dollars.

"Q And you told it to a number of other people?

"A I may have told it to other people, surely.

"Q And is it true that he stuck you for \$400,000?

"A Yes" -- it came out in the trial.

"Q He cheated you out of \$400,000?

"A Yes, he didn't pay his half of the debt back
to Bank Hofmann and I had to pay it."

Did you cheat D'Onofrio out of \$400,000?

A Absolutely not.

Q Is there any truth to that?

1 A None whatsoever. And his version of what happened
2 at the trial is equally false.
3

4 Q We are not concerned with that, Mr. Pfingst.
5 Mr. Pfingst, you have been in the United
6 States of America for the last five or six years, have you
7 not, sir?

8 A That is correct.

9 Q You have had an address in Metropolitan New York
10 or close thereby for the last five or six years?

11 A I have.

12 Q Have you seen Mr. Sorkin in the last five or six
13 years?

14 A Yes, I have.

15 Q Did you have a conversation with him about
16 certain transactions?

17 A Yes, I did.

18 Q At any time did he ever ask you any questions
19 about Training With the Pros?

20 A No, he did not.

21 Q Has anybody connected with the United States
22 Government asked you any questions about Training With
23 the Pros?

24 A No. Briefly Mr. Sorkin at one occasion
25 mentioned Training With the Pros in my presence but never

asked me any questions about it.

Q Did he ever ask you whether you were at Baur au Lac at a meeting with D'Onofrio and Stoller and Allen at which Training With the Pros was discussed?

A No, he never asked me.

Q You haven't heard about it until today, is that right?

A Until two days -- three days ago I was returning from a trip with my wife. I was informed by my son that Mr. Stoller had called on the telephone and was asking that I be a witness in this case. My son told him I was away. He said he would call upon my return. He did call. I did not wish to talk to him. I told my wife to talk to him. She told him that I would not discuss this matter informally either with the prosecution or with the defense. If I were subpoenaed I would come to court in response to the subpoena and answer any questions.

Q And you have come to court in response to a subpoena?

A I was served with a subpoena the night before last. I came yesterday and wasn't reached, so I returned today.

Q And you have answered the questions truthfully and honestly?

2 A I have.

3 MR. GOULD: Thank you, Mr. Pfingst, I have nothing
4 more.

5 MR. FELDSHUH: No questions, your Honor.

6 CROSS EXAMINATION

7 BY MR. SORKIN:

8 Q Mr. Pfingst, you were recently released from
9 jail, is that correct?

10 A That is correct.

11 Q You were convicted of bankruptcy fraud in the
12 United States District Court in the Eastern District of
13 New York, isn't that correct?

14 A That is correct.

15 Q Isn't it true that Mr. Ramon D'Onofrio was a
16 prosecution witness against you in that trial?

17 A He was the only witness against me.

18 Q There were no other witness es who testified in
19 that trial?

20 A It was a trial by the trial judge --

21 Q Mr. Phingst?

22 A The answer is no.

23 Q No other witnesses except Mr. D'Onofrio?

24 A None of any consequence.

25 Q Don't worry about consequences.

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Pfingst-cross

Were there any other witnesses who testified for the government in that particular case?

A I don't know what you mean "who testified for the government". The witness tells the truth or he doesn't.

Q Let me ask the question, Mr. Pfingst.

Were there any other witnesses other than Mr. D'Onofrio called by the government in that particular case?

A Yes, the government called a few delicatessen owners.

Q Yes or no?

A Yes.

Q But you say that it is Mr. D'Onofrio who was the witness of any consequence, the only witness of any consequence, is that so?

A The trial judge called it a one witness case. Take that for what it is worth.

Q You are of the view that as a result of Mr. D'Onofrio's testimony and his testimony alone you were convicted of the crime of bankruptcy fraud?

A Absolutely.

Q And you don't like Mr. D'Onofrio, do you?

A I neitherlike nor dislike him.

MR. SORKIN: No further questions.

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Pfingst-redirect

2 REDIRECT EXAMINATION

3 BY MR. GOULD:

4 Q Mr. Pfingst, before this unfortunate episode in
5 which you were convicted, as the government has referred
6 to it, you and Mr. D'Onofrio were partners, were you not?

7 A No.

8 Q You were his lawyer?

9 A That is correct.

10 MR. SORKIN: I don't know if this is proper
11 redirect. I don't know if that came out.

12 THE COURT: I think in view of what you
13 brought out in cross I will allow it.

14 Go ahead.

15 Q You were his lawyer and he was your client?

16 A That is correct.

17 Q Over a number of years?

18 A Intermittently over a period of four or five
19 years.

20 Q You had a number of transactions with him?

21 A That is correct.

22 Q And you were asked by counsel a few moments
23 ago whether you disliked him.

24 A I neither like him nor dislike him. It is
25 not possible to like or dislike him. Knowing what I know

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Pfingst-redirect-recross

about him, it is impossible to think of him in moral terms as either good or evil. He is not that kind of a man.

RE CROSS EXAMINATION

BY MR. SORKIN:

Q You say he was not your partner. Isn't it a fact that the evidence at that trial showed that he was a partner of yours in the bankruptcy fraud, it was a criminal partnership?

A No, that is false.

MR. SORKIN: No further questions, your Honor.

MR. GOULD: I have nothing more.

THE COURT: You may be excused, sir.

(Witness excused.)

MR. GOULD: Excuse me, just a moment, your Honor. We have to get some papers together here.

(Pause.)

MR SORKIN: Your Honor, can I be excused for just a moment and get some water?

THE COURT: Surely.

MR. GOULD: We are going to call Mr. Grimes as a witness simply to identify a paper, your Honor.

With your Honor's permission, Mr. Alenstein will interrogate him.

THE COURT: All right.

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Grimes-direct

2 J O H N J. G R I M E S, called as a witness on
3 behalf of the Defendant Stoller, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ALENSTEIN:

7 Q Mr. Grimes, are you an attorney?

8 A Yes, I am.

9 Q Are you employed in the firm of Shea, Gould,
10 Climenko & Kramer?

11 A Yes, I am.

12 Q I will show you Defendant Stoller's Exhibit AA,
13 that is the vouchers, and ask you whether you saved
14 that exhibit and extracted certain information from it?

15 A Yes, I did.

16 Q And did you then cause a series of charts to be
17 prepared from it?

18 A I did.

19 MR. ALENSTEIN: Would you mark this, please.

20 (Defendant Stoller Exhibit AD was marked for
21 identification.)

22 Q I show you Stoller Exhibit AD for identifi-
23 cation and ask you whether that is the set of charts you
24 caused to be prepared?

25 A It is.

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Grimes-direct

3003

2 Q Could you just tell us briefly what is the
3 category of information from the vouchers which is presented
4 in that chart or set of charts?

5 A This is information obtained from these
6 vouchers, Stoller Exhibit AA. It has on the charts the dates
7 that Mr. D'Onofrio appeared in the Southern District of
8 New York as far as noted on these vouchers.

9 Q The dates on which the vouchers show that
10 Mr. D'Onofrio was here to assist the government?

11 A Correct.

12 MR. SORKIN: Objection "assist the government".

13 THE COURT: We don't know that so I agree.

14 MR. SORKIN: It could be grand jury vouchers too,
15 your Honor.

16 THE COURT: You made the point. Rephrase the
17 question.

18 Q The dates on which Mr. D'Onofrio was here at the
19 request of the government?

20 A Correct.

21 Q Does it also show, the charts that you have in your
22 hand, do they also show the name of the Assistant United
23 States Attorney who Mr. D'Onofrio was with so far as the
24 vouchers reveal?

25 A The charts show the name of the Assistant

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Grimes-direct

3004

2 who signed the voucher where I could make out the name.

3 There are a few instances where I could not determine the
4 signature.

5 MR. ALENSTEIN: I offer it in evidence.

6 This is offered subject to verification. If there is any
7 error in detail which Mr. Sorkin wants to show us later,
8 so we won't take up too much time now, we will agree to
9 that.

10 MR. SORKIN: Your Honor, subject to verifi-
11 cation we have no objection with the exception of relevancy.
12 I don't see what the relevance of this document is.

13 THE COURT: Then you object on the grounds of
14 relevance.

15 MR. ALENSTEIN: It is just an easy way of
16 seeing --

17 THE COURT: Wait. Just let me look at it a
18 moment.

19 What you really did, Mr. Grimes, was to
20 set up a calendar with blocks for each day?

21 THE WITNESS: Correct.

22 THE COURT: I am sorry, Mr. Sorkin, I can see
23 some relevance so if you are objecting on that ground
24 I will, of course, overrule it, I am afraid.

25 MR. SORKIN: We would just like the opportunity

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Grimes-direct

3005

2 to verify it.

3 THE COURT: You have been offered that oppor-
4 tunity by Mr. Alenstein and Mr. Grimes. Any further
5 questions of Mr. Grimes?

6 MR. ALENSTEIN: No further questions.

7 THE COURT: Thank you, Mr. Grimes.

8 (Witness excused.)

9 (Stoller Exhibit AD was received in

10 evidence.)

11 MR. GOULD: May I have the Herzfeld stipulation
12 which I don't think was communicated to the jury?

13 MR. SORKIN: Yes.

14 MR. GOULD: Your Honor, I understand that
15 the government is now prepared to stipulate that if the witness
16 Marilyn Herzfeld were recalled she would testify that
17 she now remembers, after having reviewed her files, that
18 in the latter part of 1972 she personally discarded the
19 original Bank Hofmann indication letter, that is
20 Government's Exhibit 4, the document dated October 17, 1968,
21 along with other papers. She would further testify that
22 she did this on her own without directions from any
23 defendants or their counsel.

24 MR. SORKIN: We so stipulate, your Honor.

25 MR. FELDSHUH: So stipulated.

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2 MR. GOULD: The defendant Stoller rests, your
3 Honor.

4 MR. FELDSHUH: The defendant Frank rests,
5 your Honor.

6 THE COURT: Ladies and gentlemen of the jury,
7 we will use this interval in the case to take the afternoon
8 recess. Counsel please remain. You may file out,
9 ladies and gentlemen.

10 (Jury left the courtroom.)

11 THE COURT: Gentlemen, you want to place your
12 motions on the record.

13 MR. GOULD: I don't know. Does the government
14 have any rebuttal?

15 MR. SORKIN: We do, but this is the proper
16 time for motions.

17 THE COURT: You have rebuttal so now is the time
18 to put it on the record. If you want to put anything
19 on at the end of rebuttal, you may do it then.

20 MR. GOULD: Let me say for the record I renew
21 the motions made at the close of the government's case and
22 with your Honor's permission reserve the right to renew
23 them again and discuss them further after the government
24 puts on its rebuttal, if any.

25 THE COURT: The motions of Stoller and Frank are

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2 considered renewed and as such denied without prejudice
3 to any motions of a similar nature or whatever you care
4 to make at the end of rebuttal.

5 Mr. Sorkin, have you got your first rebuttal
6 witness here?

7 MR. SORKIN: We do, your Honor.

8 THE COURT: We will take a short recess so
9 everybody can get prepared.

10 Incidentally, we won't be able to go too long
11 as you know because of Mrs. DeBartola.

12 MR. SORKIN: I understand your Honor is
13 breaking at 3:15.

14 THE COURT: WE don't have to break right on the
15 dime. but you understand the lady's problem, she wants to
16 get away as soon as possible.

17 MR. SORKIN: I certainly do, your Honor.

18 (Recess.)
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(In open court; jury present.)

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MR. SORKIN: May I proceed, your Honor?

4

THE COURT: Are you ready to proceed with
your rebuttal witness, Mr. Sorkin?

6

MR. SORKIN: Yes, your Honor.

7

D I C K R A N D, called by the government in
rebuttal, being first duly sworn, testified
as follows:

10

DIRECT EXAMINATION

11

BY MR. SORKIN:

12

MR. SORKIN: May I proceed, your Honor?

13

THE COURT: Surely.

14

Q Mr. Rand, are you employed, sir?

15

A Yes, sir, I am.

16

Q In what capacity?

17

Q I am a career foreign service officer of the
United States and I am presently assigned at the
American Embassy in Berne, Switzerland.

20

Q How long have you been with the American Embassy
in Berne, Switzerland, sir?

22

MR. GOULD: If your Honor please, in view
of the strong conviction on my part that there will be
an objection to the entire line, could we have an offer of
proof or an indication from counsel as to what he proposed

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to do with the witness?

THE COURT: I don't think that is necessary.
I think I can anticipate what he is going to do. However,
you feel free to object any time you care to object and
I will feel free to rule.

MR.GOULD: Thank you, your Honor.

Q Mr. Rand, I didn't hear your last answer.
How long have you been with the Embassy?

A I have been with the Embassy in Berne for
14 months.

Q How long have you been with the United States
Foreign Service?

A Approximately ten years.

Q Mr. Rand, let me direct your attention to
December of 1973, sir.

Did you receive a call from a gentleman by the
name of Michael Weiler?

A Yes, I did.

Q Could you tell us the date, please?

A I believe it was the 10th of December was when
I received the initial phone call from Michael Weiler,
the 10th of December.

Q Do not tell us the conversation that you had with

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Rand-direct

3010

2 Mr. Weiler, but can you tell us who is Mr. Weiler?

3 A Well, Mr. Weiler at that time identified himself
4 to me over the phone as the private attorney of Jerome
5 Allen, Swiss attorney. He is a Swiss attorney.

6 Q Did you have a conversation with him?

7 A Yes, I did.

8 Q Mr. Rand, did there come a time after speaking
9 with Mr. Weiler where you received certain communication
10 from the State Department?

11 A Yes, there was.

12 Q How soon after speaking to Mr. Weiler did you
13 receive that communication?

14 A I believe it was the very same day. This would
15 have been December 10th.

16 Q December the 10th?

17 A Yes, sir.

18 MR. SORKIN: May we have this marked, please,
19 as Government's Exhibit No. 124.

20 (Government's Exhibit 124 was marked for
21 identification.)

22 THE COURT: What is that number again?

23 MR. SORKIN: 124, your Honor.

24 Q Mr. Rand, let me show you what has just been
25 marked as Government's Exhibit 124. I ask you, sir, if you

1 gabr Rand-direct 3011

2 can identify it (handing).

3 A Yes, sir. This is a letter that I received
4 in the normal course of Embassy business on December 13,
5 1973, the date that I received it.

6 Q Keep your voice up, sir.

7 A From Jerome Allen.

8 Q Is it stamped Received American Embassy,
9 date December 13th?

10 A Yes, it is. The letter is dated December 7th, but
11 it was received at the Embassy on December 13th and it is
12 so stamped.

13 MR. SORKIN: We offer No. 124 in evidence,
14 your Honor.

15 MR. FELDSHUH: Do you have a copy?

16 MR. SORKIN: I do not have a copy, Mr. Feldshuh,
17 I am sorry.

18 (Pause.)

19 MR. GOULD: Your Honor, we will object to this.

20 THE COURT: May I see it, please?

21 MR. GOULD: I think your Honor better see it first
22 before I say anything about it (handing).

23 (Pause.)

24 THE COURT: Certainly you don't claim that this
25 is an incompetent piece of evidence?

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Rand-direct

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2 MR. GOULD: I am not raising the question --

3 THE COURT: You must be raising relevance?

4 MR. GOULD: Yes, sir, relevance and the
5 collateral impeachment process.

6 THE COURT: It is highly relevant in my view.
7 I am going to overrule the objection.

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8 (Government's Exhibit 124 for identification
9 was received in evidence.)

10 MR. SORKIN: Your Honor, may I just read it
11 to the jury, please.

12 THE COURT: Yes, sir.

13 MR. GOULD: If your Honor please, before it is
14 read to the jury, I think it has to be made clear to the
15 jury that this only goes to the question of the credibility
16 of Allen. This has nothing --

17 THE COURT: I didn't say otherwise, Mr. Gould.
18 I would think that by this time it would be apparent.
19 I am glad to repeat it, of course.

20 This document is, as Mr. Gould has correctly sug-
21 gested, being received on the issue of the credibility
22 of Jerome Allen, who was produced here by the defendant
23 Stoller, as you know, as a witness.

24 Go ahead, sir.

25 (Mr. Sorkin read from Government's Exhibit 124

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2 in evidence to the jury.)

3 Q Mr. Rand, after receipt of this letter on
4 December 13th, did you have further telephone conversa-
5 tions with Mr. Weiler?

6 A Yes, sir, I did.

7 Q Please do not tell us the conversation, what
8 was said, but tell us the dates, please.

9 A Well, I believe for that period I was receiving
10 -- I was receiving phone calls daily from Mr. Weiler. So
11 it was between December 13th and December 15th. I would
12 say I had one phone call a day from Mr. Weiler.

13 Q Did there come a time, Mr. Rand, when you visited
14 Mr. Allen in prison?

15 A Yes, sir.

16 Q When was that, sir?

17 A It was on December 15th.

18 Q Did you have a conversation with him, sir?

19 A Yes, sir, I did.

20 Q Tell us, please, what you said to him and what
21 he said to you?

22 MR. GOULD: I object to this, your Honor.
23 It has nothing to do with this case or with these de-
24 fendants, what went on between them. They did that on their
25 cross examination of Allen.

1 THE COURT: Wait just a minute.

2 Gentlemen, will you come up to the side bar.

3 Excuse us briefly, ladies and gentlemen.

4 (At the side bar.)

5 THE COURT: Perhaps if you could summarize
6 what you expect he will answer. Though I don't share the
7 views of the defense, there is another problem that bothers
8 me.

9 MR. SORKIN: I expect to elicit, your Honor,
10 that there was a discussion where Mr. Allen wanted to go back
11 to the United States, that Mr. Rand should contact his
12 lawyer and additionally that there was no threat made upon
13 Mr. Allen by Mr. Rand to the effect that if you don't agree
14 to go back to the United States and cooperate, we will put
15 pressure on the Swiss to keep you in solitary for two years.
16 I have highlighted on the testimony where that came --

17 THE COURT: No, I am aware of that. The
18 thing I am really concerned with -- I can't imagine
19 this would be so, but I want to be sure. He is not going to
20 say anything about any of the other parties in this case?

21 MR. SORKIN: Oh, no, absolutely not.

22 MR. GOULD: Why is it not a collateral impeach-
23 ment?

24 THE COURT: I will allow it.

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(In open court.)

THE COURT: Do you want to have that last question repeated?

MR. SORKIN: Please, your Honor.

(Question read.)

Q Do you recall the conversation, Mr. Rand?

A Yes, sir, I do.

Q Tell us, please, to the best of your recollection, what he said and what you said?

A The entire conversation?

Q What you recall, sir.

A There was really nothing very much substantive to what we discussed. I had been asked -- it was actually in response to a request from the Swiss attorney, Mr. Weiler, and from instructions I had to go down to visit Mr. Allen to determine whether he was bona fide in his agreement to return to the United States, that was one aspect of it, to discuss with him his travel to the United States. We did discuss these points, how and possibly when he would travel.

Mr. Allen just discussed with me his personal situation. The bulk of the conversation was really Mr. Allen's unfolding himself to me, telling me all his personal problems and how he had now decided that he wanted

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2 to regularize his status with U.S. authorities, that he
3 wanted to return to the United States.

4 As I recall, he told me that his activities
5 had caused estrangement in his marriage. He told me about
6 his personal problems. Then we discussed what had been
7 agreed during communications exchanged during the week with
8 regard to his return to the United States.

9 Q Mr. Rand, subsequent to this meeting with Mr.
10 Allen on December 15th, did you have a conversation with
11 Mr. Weiler, his attorney, again?

12 A I am sorry, I didn't hear the question.

13 Q Subsequent to the December 15th meeting with
14 Mr. Allen, did you have a telephone conversation or a
15 conversation in person with his attorney, Michael Weiler?

16 A I am sure I did.

17 Q When was that in relation to the 15th?

18 A Well, I think possibly the next conversation
19 was almost -- was almost one month later when, in fact, it
20 appeared that Mr. Allen was going to be released by the
21 Swiss authorities and he would, in fact, be travelling
22 back to the States.

23 Q Mr. Rand, when was Mr. Allen released by the
24 Swiss authorities, sir?

25 A He was released on January 14th, I believe.

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Rand-direct

3018

2 United States?

3 A Yes, sir, I did.

4 Q Mr. Rand, there has been testimony in this case
5 that --

6 MR. SORKIN: I am quoting from page 2543,
7 gentlemen, of the transcript, line 23.

8 Q Let us go back to put it in context. Line 14.

9 "Q And all of the otherthings you put in the
10 letters?

11 "A Yes." This is testimony of Mr. Allen.

12 "Q Previously?

13 "A Yes.

14 "Q All right. And he still suggested that you write
15 those letters?

16 "A Or face -- because of other pressures from your
17 office -- two years in the Swiss jail."

18 MR. GOULD: Wait a minute.

19 Q Mr. Gould said I can't hear the answer.
20 Mr. Allen repeated it again, "or due to pressure being
21 exerted by the State Department through the Embassy in
22 Berne.

23 "A Mr. Dick Rand. "

24 Mr. Rand, did you exert any pressure on Mr.
25 Allen?

1 gabr Rand-direct 3019

2 A I did not, sir.

3 May I expand on that?

4 Q Surely.

5 MR. GOULD: No, I would prefer he didn't ex-
6 plain, if your Honor please.

7 THE COURT: I think then you put your next question,
8 Mr. Sorkin.

9 MR. SORKIN: Very well, your Honor.

10 On page 2544, gentlemen, line 9.

11 Q "Q Mr. Allen, I don't mean to yell.

12 Just tell us what Mr. Rand told you.

13 "A Mr. Rand said he would exert -- he could exert
14 unofficial pressure on the magistrate to see that I received
15 the optimum sentence, two years on a bad check, that if
16 I had brains I would indicate a desire to come home, waive
17 extradition and cooperate with your office. If I didn't
18 do that, pressures would be exerted to keep me in solitary
19 confinement in Switzerland."

20 Mr. Rand, did you ever tell Mr. Allen that
21 pressures would be exerted on the Swiss to keep him in
22 solitary confinement for two years?

23 A I absolutely did not.

24 Q On that same page, line 22:

25 "Q --

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MR. GOULD: I assume, your Honor, I have a continuing objection on the ground pressed at the side bar for this line of inquiry?

THE COURT: If you say you do, I will not quarrel with you.

MR. GOULD: I don't want to interrupt. Your Honor has ruled.

THE COURT: Indeed I have.

Q "Q Mr. Allen -- by the way, when did Mr. Rand tell you this?

"A Almost immediately after I arrived in jail, Mr. Sorkin. I don't know exactly whether it was the first, second or third day."

Mr. Rand, do you know when Mr. Allen was arrested?

A He was arrested on December 2nd, I believe.

Q When did you first see him, Mr. Rand?

A I first saw him on December 15th in response to his letter pleading with me to come and visit him.

MR. SORKIN: Page 2568, gentlemen. I am sorry, 2572. I am sorry again, 2571, the bottom of the page, line 20.

Q "Q Now, did you, Mr. Allen, tell Mr. Rand or anyone else that the Mafia was threatening you not to

1 gabr

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2 return?

3 "A Yes, I did."

4 Mr. Rand, did Mr. Allen at any time tell you that
5 the Mafia was pressuring him not to return to the United
6 States?

7 A I --

8 MR. GOULD: Just a minute.

9 If your Honor please, the question is,
10 "Did you, Mr. Allen, tell Mr. Rand or anyone else
11 that the Mafia was threatening you not to return?

12 "A Yes, I did."

13 MR. SORKIN: If Mr. Gould will look at the very
14 next page --

15 THE COURT: Yes, please. I am trying to follow
16 thios. Where are we? I don't see this on 2572.

17 MR. GOULD: This is at the bottom of 2571.
18 It is the last question and answer at the bottom of 2571.

19 THE COURT: Yes, I know. I will permit it.
20 Go ahead. However, you haven't completed the
21 job.

22 MR. SORKIN: I will continue with the next
23 question, your Honor. Page 2572.

24 Q "Q Who did you tell now?

25 "A I told that to Mr. Rand and I told that to

2 Mr. Weiler and Mr. Rand said 'Jerry, you are having a
3 grandchild. If you don't return Sorkin's office will
4 exert pressure through me on this court and you will have
5 two years in solitary'."

6 Mr. Rand, did you ever tell that to Mr. Allen?

7 A Never, sir.

8 Q I am sorry?

9 A I still feel compelled to tell you why I would
10 never have said to him, because --

11 THE COURT: No. This is a no no in our business,
12 Mr. Rand.

13 THE WITNESS: I am sorry.

14 THE COURT: Anything else?

15 MR. SORKIN: Yes. One last document, your
16 Honor.

17 May we have this marked as Government's Exhibit
18 125, please.

xx 19 (Government's Exhibit 125 was marked for
20 identification.)

21 Q Mr. Rand, would you look at this, sir. I ask you
22 if you can identify that (handing).

23 A Yes, sir.

24 Q What is it, sir? Just generically. Tell us
25 what type of document it is.

1	qabr	Rand-direct	3023
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2 A Well, during this--

3 Q Is it a mortgage, a letter?

4 A It is a letter that I have sent -- that I sent
5 to Mr. Jerome Allen or that I wrote to Mr. Jerome Allen on
6 December 18th. That was the date it was typed.

7 Q Is that the original, sir, or a copy?

8 A This is a copy.

9 Q You retained it in your files?

10 A Yes, sir, I did.

11 MR. SORKIN: Your Honor, we offer 125 in evi-
12 dence.

13 (Pause.)

14 MR. GOULD: I have no objection to this.

15 MR. FELDSHUH: No objection, your Honor.

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18 MR. SORKIN: Your Honor, I would like to read
19 125 to the jury.

20 MR. GOULD: Before it is read again, your Honor,
21 I think the jury has to understand it is not received against
22 these defendants on any substantive issues.

23 THE COURT: I think the jury is well aware
24 of that. Again I would be glad to repeat. We are only
25 dealing with the question of the credibility of one

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Jerome Allen. That is all.

MR. GOULD: Thank you, your Honor.

(Mr. Sorkin read from Government's Exhibit
125 in evidence to the jury.)

Q Mr. Rand, did you give that to Mr. Allen or
mail it to him, the original, sir?

MR. GOULD: I will concede it.

A Yes, I did.

Q Where, sir?

A I actually handed the original of this letter
to him on January 15th, the day he was departing for the
United States, which was the next occasion I had to see him.

THE COURT: Anything else?

MR. SORKIN: I don't believe so. Let me just
check one moment, your Honor.

(Pause.)

MR. SORKIN: No further questions, your Honor.

THE COURT: Any questions, Mr. Gould?

MR. GOULD: Yes, very briefly, your Honor.

CROSS EXAMINATION

BY MR. GOULD:

Q Mr. Rand, you have been in the foreign service
about 14 years; is that correct?

A About ten, sir.

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Q Ten.

When these events as to which you have been questioned took place, you were attached to the Embassy in Berne?

A Yes, sir.

Q And ten you heard that some American was in jail in Saint-Antoine and wanted to speak with you; isn't that right?

A That is not how it happened in this case.

Q In a general way?

A Yes, sir.

Q Without the details.

A I learned there was an American by the name of Allen --

Q That's right. That is a normal function, is it not, of Embassy officials throughout the world?

A Yes, sir.

Q To try to assist Americans who are detained in foreign penal institutions and so on?

A Yes, sir.

Q You have done that many times?

A Yes, sir.

Q When you went over there to Saint-Antoine you found Mr. Allen, you had quite a long conversation with

1 qabr

Rand-cross

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2 him, I assume?

3 A I would say about 30 minutes.

4 Q In the course of that conversation he poured
5 out his heart to you, didn't he?

6 A To some extent he did, yes.

7 Q That would be a fair characterization, wouldn't
8 it, Mr. Rand?

9 A Yes.

10 Q He told you how unhappy he was and how anxious
11 he was to get back to the United States; wasn't that the
12 thrust of it?

13 A One aspect of the conversation.

14 Q Yes. And that he was in trouble with the
15 federal authorities in the United States and he wanted to
16 cooperate with them? That was the other thrust, wasn't
17 it?

18 A That he wanted to return to the United States,
19 yes.

20 Q That was the principal --

21 A Yes, sir.

22 Q All right.

23 The theme of the play was nostalgia? He was
24 anxious to get home, wasn't he? Just yes or no. If I am
25 wrong, you tell me I am wrong.

2 A I think it was more in the context that he
3 wanted to finally regularize his legal status.

4 Q I see.

5 A He was a fugitive and he wanted to regularize
6 his
7 status.

8 Q And one of the problems, as I understand it,
9 that you discussed was the possibility of an extradition
10 proceeding; is that correct?

11 A Mr. Gould, I don't specifically recall discussing
12 with him the possibility of his extradition. I do have a
13 recollection that we discussed for some very few minutes
14 extradition proceedings with Switzerland in general and the
15 possibility of extradition proceedings.

16 Q I see.

17 Did you make a report, Mr. Rand, on your
18 visit with Mr. Allen?

19 A Yes, sir.

20 Q A written report?

21 A In the sense that I transmitted the substance
22 of our conversation by telegram to Washington.

23 Q You did.

24 Do you have a copy of what you transmitted?

25 A I don't, sir.

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MR. GOULD: Does the government have it
here?

MR. SORKIN: Your Honor, I don't know -- I think
we have something, but I am really not quite sure what
it is. I will look --

THE COURT: Let me see if I can get this from
Mr. Rand.

You sent a cablegram back to Washington?

THE WITNESS: You see, your Honor, our communi-
cations are directly with the State Department. The end
user I assume is the Department of Justice. My telegrams were
from the American Embassy, Berne, to the Department of
State, Washington.

THE COURT: I understand that.

What I am trying to get at is this particular
telegram, did it purport to summarize the conversation you had
with Allen in the Saint-Antoine prison?

THE WITNESS: It wasn't a summarization of my
conversation as such, but included in the communication was
a -- was a reply to the Department's instructions to visit
Allen and try to determine on my own -- in my own right
whether he was really planning on going back to the United
States.

THE COURT: All right.

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Q Then, Mr. Rand, you got a communication from the State Department, did you not, in response to what you had cabled?

A Yes.

Q The response, do you have that hear?

A I don't have any --

MR. GOULD: Does the government have that communication?

MR. SORKIN: I don't think we have any State Department communications --

THE COURT: I would be surprised if you did. I would be surprised if you did, but I would certainly ask you to look for them if you have.

MR. SORKIN: I certainly will, your Honor. If I do have something, it is not here.

Q The report you got back from the State Department in Washington told you what the Justice Department wanted you to do; isn't that right? Didn't it contain some reference to what the Justice Department or the office of the United States Attorney wanted you to do?

A Are you talking about in reply to that communication we were just discussing?

Q That is right.

A My action had been completed. I didn't receive

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Rand-cross

3030

2 any --

3 Q You don't remember anything about what was in
4 the piece of paper that you got back from the State
5 Department in Washington, Mr. Rand?

6 A In reply to the communication?

7 Q Yes.

8 A I don't recall there was a reply.

9 Q You don't remember getting any?

10 A I don't recall that there was a reply to that
11 communication.

12 Q Did you get any written communications from
13 anybody about the matter of Mr. Jerome Allen?

14 THE COURT: What do you mean by "anybody"?

15 MR. GOULD: Anybody in the government, your
16 Honor.

17 THE COURT: That is precisely why I asked you.
18 If you don't mind, I would think it ought to be clarified.
19 I will insist upon it.

20 MR. GOULD: Yes, sir.

21 THE COURT: Put it again.

22 Q Did you get any communications from any branch
23 or agency of the United States Government about the case
24 of Jerome Allen?

25 A The Department of State, sir.

1 A I brought those documents from the file that were
2
3 not official telegrams back and forth.

4 THE COURT: In other words, what you are saving,
5 the official correspondence with the State you did not
6 bring?

7 THE WITNESS: I did not bring.

8 THE COURT: All right.

9 Q Was there any reason why you didn't bring it?

10 A I just didn't think it was going to be asked
11 for.

12 Q Nobody suggested to you it might be asked for?

13 A No, sir.

14 Q Did anybody suggest to you that these would be
15 asked for?

16 A I act immediately on my own. That is what
17 I did when I came. I pulled out the two original items of
18 correspondence from the file.

19 Q Who arranged for you to come here? Who asked
20 you to come here?

21 A Mr. Sorkin.

22 Q By telephone?

23 A Originally by telephone.

24 Q Did he discuss with you what you should bring?

25 A Not a word, sir.

1 gabr Rand-cross 3033

2 Q Didn't he ask you what you had?

3 A No, sir.

4 Q Did you look through your file in order to take

5 these two papers out of it before you came here?

6 A Yes, sir.

7 MR. SORKIN: Your Honor, I object. I think

8 we have gone over and over this.

9 MR. GOULD: Anything I do is wearisome even

10 if it takes five minutes.

11 THE COURT: Please, gentlemen. That is enough.

12 MR. GOULD: What is wrong with what I am do-

13 ing?

14 THE COURT: Just a minute. We will have no more

15 comments from either one of you.

16 Do you have any more questions, Mr. Gould?

17 MR. GOULD: Yes, your Honor. I am in the middle

18 of one right now.

19 THE COURT: Let us go along then.

20 Q Before you came here and you pulled those two

21 letters out of the file, did you look through the file?

22 A Yes, sir.

23 THE COURT: We have covered that, Mr. Gould.

24 He said yes.

25 MR. GOULD: I did not get an answer to it until

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Rand-cross

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2 just this moment.

3 THE COURT: I am sorry. I am sitting here.
4 I know what I heard. Let us get to something else.

5 Q Did you see in the papers that are there some
6 references to the Department of Justice or the United States
7 Attorney's office?

8 A Yes, sir.

9 Q Do you remember what it said about the
10 Department of Justice or the United States Attorney's
11 office?

12 A I am sure I could reconstruct what it said.

13 Q What does it say about the Department of Justice
14 and the United States Attorney's office?

15 A I had several exchanges of communications. The
16 first communication informed me, and this is when I first
17 became aware of what was involved in the Allen case -- was a
18 telegram from the Department of State stating that the Allen
19 who was then in jail in Geneva was, in fact, a fugitive
20 from U.S. justice, the Justice Department was interested
21 in his returning to the United States, that already in
22 the first communication I received I was informed that Allen
23 had asked to return to the United States voluntarily and
24 that I should assist him in making travel arrangements upon
25 his release from jail. This is the substance of one

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Rand-cross

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2 communication.

3 The exchanges of the other communication were to
4 satisfy the Swiss attorney's request that I give him some
5 assurance of what treatment Mr. Allen would receive
6 when he arrived in the United States and this involved an
7 exchange of several telegrams, until I was given the wording
8 of the letter that was just admitted as an exhibit.

9 Q Mr. Rand, just one or two questions.

10 Weren't you asked to ascertain if Mr. Allen really
11 wanted to return voluntarily?

12 A In the first communication I was asked to visit
13 Allen in Saint-Antoine prison and discuss his offer of
14 voluntary return to the United States with him and to make
15 a determination myself whether he was bona fide --

16 Q Really wanted to come home or not?

17 A Yes, sir.

18 Q That is the standard operating procedure in
19 these cases, isn't it?

20 A I never had a case like this.

21 Q Very well.

22 Were you not also instructed at one point
23 to do everything that you could to encourage him to return
24 or facilitate his return?

25 A No, sir.

1 gabr

Rand-cross

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2 Q You were not?

3 A I was not because it wasn't in issue. He
4 already agreed to come back.

5 MR. GOULD: Thank you very much.

6 I have nothing further.

7 MR. FELDSHUH: No questions.

8 THE COURT: Do you have anything more?

9 MR. SORKIN: I have nothing, your Honor.

10 THE COURT: Thank you, Mr. Rand.

11 You may be excused, sir.

12 (Witness excused.)

13 MR. SORKIN: In light of your Honor's ruling,
14 the next witness --

15 THE COURT: No. We are going to stop now.

16 MR. SORKIN: I am sorry.

17 THE COURT: Besides, I have another case here
18 coming, waiting in the wings.

19 Mrs. DeBartola and ladies and gentlemen, as you
20 know or you may remember -- I haven't mentioned it, I
21 should have mentioned this yesterday -- tomorrow being
22 Friday, I have other cases, so we will go over until
23 Monday, which you have agreed very nicely to sit. We will
24 start again at 9:30 on Monday. Now, I believe subject to
25 correction of counsel there is a good chance we will

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finish the proof on Monday.

Is that a fair statement for me to make on your behalf, gentlemen?

MR. GOULD: I have nothing more.

MR. FELDSHUH: Certainly on my behalf.

MR. SORKIN: I think so, your Honor, quite sure.

THE COURT: So that will give you an idea now where we are going.

I hope you have a very pleasant weekend. Put the case entirely out of your mind and enjoy your other pursuits, whatever they may be.

See you Monday morning at 9:30.

(Adjourned to Monday, October 14, 1974,
at 9:30 a.m.)

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Jerome Robert Allen (Resumed)		2861	2908	
Joseph Pfingst	2975	2998	3000	3001
John J. Grimes	3002			
Dick Rand	3008	3024		

EXHIBIT INDEX

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
123	2870	
124	3010	3012
125	3022	3023
<u>Defendant Stoller</u>		
AB	2928	
AD	3002	3005

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United States of Ameirca

v.

74 Cr. 159

Philip Stoller and
Martin Frank

New York, New York

October 14, 1974
9:30 a.m.

- - -

(Trial resumed in the robing room.)

THE COURT: Juror No. 5 is in very bad condition. I haven't seen her but Mr. Bowes has and he says she looks very poorly.

More than that, she has a medical sheet here and wants to be excused from jury service henceforth.

Miss Fenton is quite of advancing years. She is about 68 or 70, I judge.

MR. GOULD: What else can we do but let her go and take one of the alternates?

THE COURT: I am inclined to agree but in these matters we must proceed with great formality.

MR. FELDSHUH: I see no alternative but to excuse the poor lady. I certainly don't want to be a party to anybody getting ill because of this condition.

1 jabr

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2 MR. GOULD: Who is the first alternate?

3 THE COURT: Mr. Jacob Skriloff.

4 MR. GOULD: My vote would be to excuse the lady
5 and take the No. 1 alternate.

6 MR. FELDSHUH: I concur.

7 MR. SORKIN: I do, too, your Honor.

8 THE COURT: What I would like to do with you
9 present is to ask Mrs. Fenton to come in here so we can
10 tell her personally.

11 Good morning, Mrs. Fenton. We are sorry
12 to hear about you. All the lawyers have agreed that under
13 the circumstances we don't want to keep you any longer.

14 MRS. FENTON: All right.

15 THE COURT: I don't want to have you hesitate to
16 get back home or go wherever you are going and I wanted
17 to thank you personally for all your participation to the
18 extent you could.

19 MRS. FENTON: Thank you very much.

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20 (Court Exhibit 4 was marked.)

21 THE COURT: Before we bring the jury in,
22 I am aware as you all are that the government has served --
23 I think they intend them to be two briefs.

24 MR. SORKIN: The document in your right hand
25 is to be a memo of law and not an affidavit.

MR. GOULD: May we have about five minutes to read this, your Honor?

THE COURT: I suggest that since we have held our jury up already unavoidably to be sure that we get going and I assume the government has other witnesses.

MR. SORKIN: We do, your Honor.

THE COURT: At some proper time in the morning when we have a chance you will have time to read it.

MR. SORKIN: We will be through with the witnesses very quickly. If we start now we could be through at 10, 10:15 and we would have the question of the memos.

THE COURT: I still would rather keep our momentum up.

MR. SORKIN: All right.

(In open court; jury present.)

THE COURT: Good morning, Mrs. DeBartola and ladies and gentlemen.

As you may or may not know, Mrs. Fenton became ill over the weekend and brave soul that she was, she even came in here. However, she brought in here a note from her physician. Apparently she has had a longstanding condition which stabilizes instead when she becomes ill in other directions. She has been excused with the agreement

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of all concerned. That means we will ask Mr. Skriloff to step down and take Mrs. Fenton's place as Juror No. 5.

Thank you, Mr. Skriloff.

Mr. Sorkin.

MR. SORKIN: Yes, your Honor.

The government calls John Slavinski.

J O H N J. S L A V I N S K I, called as a witness by the government in rebuttal, being first duly sworn, testified as follows:

MR. SORKIN: May I proceed, your Honor?

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. SORKIN:

Q Mr. Slavinski, by whom are you employed?

A I am employed by the United States Postal Inspection Service.

Q In what capacity?

A I am an agent.

Q How long have you been employed as an agent by the United States Postal Service?

A Six years now.

Q Let me direct your attention to January 15, 1974. Could you tell us, please, where you were at approximately 4:30 in the afternoon?

1 A Yes. I was out at the International Airport,
2
3 John Fitzgerald Kennedy International.

4 Q Were you with anyone?

5 A Yes, I wa with Inspector Gray.

6 Q Did there come a time when you met a gentleman
7 by the name of Jerome Allen?

8 A There did.

9 MR. GOULD: I am going to object to this line
10 as irrelevant and immaterial.

11 THE COURT: I can't say that that is clear.
12 I don't know what is coming. I am going to take this
13 subject to connection and see what it is all about.

14 Q What time did you meet him?

15 A Approximately 4:30 on the 15th of January.

16 Q Did you then accompany Mr. Allen some place?

17 A I did. I accompanied Mr. Allen down here to the
18 federal court house.

19 Q Were you with anyone when you accompanied him
20 down?

21 A I was with Inspector Gray.

22 Q What time did you meet Mr. Allen at the
23 airport?

24 A Well, the plane was supposed to arrive at
25 3:40 but it was late. It came in maybe a quarter after

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Slavinski-direct

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2 four, 4:30.

3 Q What time did you arrive at the court house?

4 A We arrived at the court house between 5:30
5 and a quarter of six.

6 Q Where did you take Mr. Allen?

7 A We took Mr. Allen up to your office.

8 Q Was anyone present, Inspector, in my office
9 other than myself, yourself, Mr. Allen and Inspector Gray?

10 A No, sir.

11 Q How long were you in my office, Mr. Slavinski?

12 A I was in your office until about five minutes
13 of seven.

14 Q Were you present at all times?

15 A I was.

16 Q Did you leave the courthouse at approximately
17 five minutes to seven?

18 A I did.

19 Q Were you accompanied by anyone?

20 A Yes, I was. I was accompanied by Mr. Allen
21 and Inspector Gray.

22 Q Did you exit the courthouse, in front of the
23 court house?

24 A I did.

25 Q Did you observe Mr. Allen?

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Slavinski-direct-cross

3045

A I did.

Q Where did you observe Mr. Allen go?

A He was heading down the steps from the front of the building here heading for a cab, I presume.

Q Inspector Slavinski, I just want you to confine yourself to Training With the Pros. Was there any discussion in my office about Training With the Pros that you recall between the time you arrived at about 5:45 until five to seven when he left my office?

A No, sir.

MR. SORKIN: I have no further questions of this witness.

CROSS EXAMINATION

BY MR. GOULD:

Q As I understand you, sir, you were present in Mr. Sorkin's office from 5:30 to a little before 7 o'clock?

A Correct.

Q You were present all during the discussions that went on in there?

A I was.

Q What did the discussion concern itself with?

A Mr. Allen just came in from Switzerland and he was in a hurry to see his wife. He had I believe

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Slavinski-cross

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telephoned his wife from the office there and he was relating how prison life was in Switzerland.

Q That is all you remember of it?

A Yes, sir.

Q Pardon?

A That is correct.

Q So the only thing you remember about the discussion was a description by Mr. Allen of prison life in Switzerland? That is, other than his anxiety to see his family?

A That is correct. He talked for quite a long time about how the prison was over there and about Mr. Kornfeld who he saw in prison over there at the time.

Q There was no discussion whatever of his coming back to see Mr. Sorkin at some other time?

A That is correct. He did mention that he was going to come in to see Mr. Sorkin the following day. That was agreed upon.

Q You were not there on the following day, were you?

A No, sir.

Q And you don't know whether he came back to see him on the following day or not?

A No, sir, I do not.

1

- jqbr

Slavinski-cross

3047

2

Q Did you hear any reference at all to the prospect of Mr. Allen being a witness for the government?

3

4

A Not at that time I did not, sir.

5

Q Did you keep any notes?

6

A No, sir, I did not.

7

Q Did anybody keep any notes, Mr. Slavinski?

8

A Not to my knowledge.

9

Q Mr. Slavinski, was there any discussion about Mr. Allen getting a lawyer?

11

A I had advised Mr. Allen that he had the right to obtain counsel.

12

13

Q That was out at Kennedy Airport?

14

A Correct.

15

Q But when you got here into town and you went to Mr. Sorkin's office, did you hear any discussion about Mr. Allen getting a lawyer?

17

18

A Mr. Sorkin advised him of his constitutional rights when we arrived at the office again.

19

20

Q Let us see, Mr. Sorkin advised him that he had the right to remain silent, is that correct?

21

22

A That is correct.

23

Q You remember what Sorkin advised him of?

24

A Yes, sir.

25

Q He said "You have the right to remain silent,"

1 jqbr

Slavinski-cross

3048

2 yes?

3 A That is correct.

4 Q And he said "You have the right to get a
5 lawyer?"

6 A That is correct.

7 Q What did Mr. Allen say to that?

8 A As best as I can remember, Mr. Allen kept
9 gibbering about his trip in and he was anxious to go home and
10 he said at that time that he was interested in cooperating
11 with the U.S. Attorney's office.

12 Q He did say that?

13 A Yes, sir.

14 Q Did he tell him when he would come back to
15 cooperate?

16 A No, sir. The only thing I know is that he
17 was going to come back to cooperate.

18 MR. GOULD: I have nothing else.

19 MR. FELDSHUH: No questions, your Honor.

20 THE COURT: Anything further?

21 MR. SORKIN: No further questions.

22 THE COURT: Thank you, Mr. Slavinski, you may
23 be excused, sir.

24 (Witness excused.)

25

Tk 2

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hpb-1

Antonielli-direct

3049

2

MR. SORKIN: Your Honor, the Government

3

calls Peter Antonielli.

4

P E T E R C. A N T O N I E L L I, called as a

5

witness in rebuttal by the Government, having been

6

first duly sworn, was examined and testified as

7

follows

8

MR. SORKIN: May I proceed, your Honor?

9

THE COURT: Yes.

10

DIRECT EXAMINATION

11

BY MR. SORKIN:

12

MR. SORKIN May we have this six-page document

13

marked as Government Exhibit 126, please?

xxx

14

(Government Exhibit 126 was marked for

15

identification.)

16

Q Mr. Antonielli by whom are you employed sir?

17

A General Service Administration.

18

Q In what capacity.

19

A Sergeant protective service.

20

Q Let me show you what has been marked as Govern

21

ment Exhibit 126 for identification. Can you please identify

22

that?

23

A Yes These are records of persons arriving and

24

leaving the building

25

Q On what date, sir?

1 hpb-2

Antonielli direct

2 A The 15th of January 1974.

3 Q Sergeant Antonielli, are those records kept in
4 the ordinary course of the Federal protective service admini-
5 stration?

6 A Yes, sir.

7 Q Are they made in the ordinary course of the Fed-
8 eral protection service?

9 A Yes sir.

10 MR. SORKIN: Your Honor, we offer Government
11 Exhibit 126 in evidence.

12 MR. GOULD May I ask the witness one or two
13 questions about this paper, your Honor?

14 VOIR DIRE EXAMINATION

15 BY MR. GOULD:

16 Q Mr. Antonielli, these are kept every day, aren't
17 they?

18 A Yes, sir.

19 Q How about the one for the 16th, is that available?

20 A Yes, sir.

21 Q How much trouble would it be to get it?

22 A No problem at all.

23 MR. GOULD: I have no objection.

24 MR. FELDSHUH: No objection.

25

hpb-3

Antonielli-direct

xxx

(Government Exhibit 126 was received in
evidence.)

BY MR. SORKIN:

Q Sergeant Antonielli, do you work in this building,
sir?

A Yes, sir.

MR. SORKIN: Your Honor, I would like to read
one entry on Government Exhibit 126.

THE COURT: All right.

MR. SORKIN: Better yet, I would like to show it
to the jury. January 15, 7:15, ladies and gentlemen, P.M.
the sign-out, the person signing out at 7:15, January 15,
1974.

MR. GOULD: Your Honor, could we ask Sergeant
Antonielli to get us the one for the 16th.

THE COURT: It seems to me that we could, but --

MR. GOULD: It would be a sur-rebuttal witness.

THE COURT: Why don't you whisper into Mr. Sorkin's
ear. If I guess what is involved, I don't think there
would be any dispute.

MR. GOULD: May I just ask the witness a few
questions?

VOIR DIRE EXAMINATION BY MR. GOULD:

Q Sergeant, what is the practice? Not everybody

hpb-4

Antonielli-direct

1 who leaves the building after 5:00 signs out?

2 A After 7:00.

3 Q So if somebody left the building late on the
4 afternoon or early in the evening of the 16th, there would
5 be a similar document?
6

7 A Providing if it is a jury escorted by marshal, it
8 is not necessary to sign or agents leaving with prisoners.

9 Q But if one of the Assistant United States
10 Attorneys left he would normally sign out, correct?

11 A Yes, sir.

12 Q Were you asked to get the record of the 16th?

13 A No, sir.

14 Q If a man who was here as a witness left the building
15 after 7:00 o'clock, would he be required to sign out?

16 A Not necessarily.

17 Q Not necessarily?

18 A No, sir.

19 Q Who is required to sign out?

20 A At times we get called by the U. S. Attorney's
21 office and told we have a witness come in, please don't have
22 him sign in, we will pick him up, meet him at the door because
23 after five o'clock they can't get into the U. S. Attorney's
24 office.

25 Q If somebody came in and it had been arranged with

hpb-5

Antonielli-direct

1 you in advance by the U. S. Attorney's office there would
2
3 be no record of his admission?

4 A If it is requested by the U. S. Attorneys, yes,
5 sir.

6 Q When he left, if he was escorted by somebody from
7 the U. S. Attorney's staff there would be no record of his
8 departure?

9 A Correct.

10 MR. GOULD: Your Honor, I would still like to
11 see the record. 16th, with your Honor's permission.

12 THE COURT: I will ask Officer Antonielli if he
13 can produce it for you, but in the meantime I see no reason
14 to hold him here.

15 MR. GOULD: No, I am not suggesting that.

16 THE COURT: Would you furnish counsel with a look
17 at that sheet or sheets for the 16th?

18 THE WITNESS Yes sir About 20 minutes to a
19 half hour

20 MR. SORKIN I have no further questions.

21 (Witness excused.)

22 MR. SORKIN: Your Honor, the Government calls
23 Inspector Alva Gray.

1 hpb-6 Gray-direct 3054
2 A L V A H G R A Y, called as a witness by the Government,
3 in rebuttal, having been first duly sworn, was examined
4 and testified as follows:

5 MR. SORKIN: May I proceed, your Honor?

6 THE COURT: Yes.

7 DIRECT EXAMINATION

8 BY MR. SORKIN:

9 Q Mr.Gray, by whom are you employed, sir?

10 A United States Postal Service.

11 Q In what capacity?

12 A Postal inspector.

13 Q How long have you been so employed?

14 A Since 1970, sir.

15 Q Mr.Gray, Inspector Gray, let me direct your
16 attention to the date January 15, 1974. Can you tell us
17 where you were approximately 4:30 in the afternoon?

18 A John F Kennedy Airport.

19 Q Were you with anyone, sir?

20 A Inspector Slavinsky.

21 Q Did there come a point when you met a gentleman
22 by the name of Jerome Allen?

23 A Yes, sir.

24 Q Where did you meet him?

25 A As he disembarked from an aircraft.

hpb-7

Gray-direct
cross

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2

Q Did you accompany Mr. Allen any place?

3

A Yes, sir.

4

Q Where did you accompany him?

5

A To your office, sir.

6

Q What time did you arrive at my office to the best
7 of your recollection?

8

A Approximately a quarter of 6:00.

9

Q When did you leave the courthouse, Inspector Gray,
10 on the evening of January 15, 1974?

11

A Approximately 7:00 P.M.

12

Q Did you leave with anyone?

13

A Yes, sir.

14

Q Whom did you leave with?

15

A Inspector Slavinsky and Mr. Allen.

16

Q Did you observe Mr. Allen as he left the courthouse?

17

A Yes, sir.

18

Q Where was Mr. Allen going or heading, if you know?

19

A He was heading -- he left the steps to the right
20 in an effort to catch a cab.

21

MR. SORKIN: I have no further questions.

22

CROSS-EXAMINATION

23

BY MR. GOULD:

24

Q Were you expecting Mr. Allen at Kennedy Airport?

25

A Yes, sir.

hpb-8

Gray-cross

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Q Why were you expecting him, sir?

A We had a warrant for his arrest.

Q Did you exhibit the warrant to him?

A Yes, sir.

Q Who issued the warrant?

A Southern District of New York.

Q When you came back to this building, did you go to Mr. Sorkin's office?

A Yes, sir.

Q Were you present during the entire period?

A Yes, sir.

Q Did you hear what was discussed?

A Yes.

Q Was there any discussion of his testifying as a witness for the Government?

A Yes.

Q What was said about that?

A Just that he was to come in the next day and they would go over it and discuss it?

Q Was Mr. Doonan present at that time?

A No, sir.

Q Just you, Inspector Slavinsky, Mr. Sorkin and Allen, correct?

A Yes, sir, as best I can recall.

hpb-9

Gray-cross

1

2

Q And what was the general subject of conversation?

3

A Well, Mr. Allen was doing most of the discussion.

4

MR. FELDSHUH: Keep your voice up, Mr. Gray,

5

please.

6

A Mr. Allen was doing most of the talking.

7

Q What was he talking about?

8

A He was stating how he was glad to be back to the

9

United States and what poor treatment he received at the

10

hands of the Switzerland authorities.

11

Q Do you remember Allen telling about being threat-

12

ened in Switzerland?

13

A No, sir.

14

Q Nothing like that?

15

A No, sir.

16

Q And so all of this time, from about 5:30 --

17

about an hour and a half, Allen was talking about conditions

18

in Switzerland, is that right?

19

A For the most part as I recall, yes, sir.

20

Q Did Mr. Sorkin say anything?

21

A Yes. There was general discussion.

22

Q What was it about?

23

A Only about Mr. Allen and his past experience. He

24

mentioned Mr. Kornfeld, a cell mate, things of that nature.

25

The only thing Mr. Sorkin was telling him, that he would get

1 together with him the following day and discuss what his
2 testimony would be.

3 Q Did you hear them make an appointment for the
4 following day?

5 A Yes.

6 Q What time was it?

7 A I don't recall the specific time he was to
8 appear.

9 Q Was it the morning or the afternoon?

10 A I couldn't swear to that, sir.

11 Q Was he to meet here or at some other place?

12 A Here, as far as I know.

13 Q Do you remember that he was to meet her?

14 A Yes, he was to come in for arraignment, yes, sir.

15 Q For arraignment?

16 A Yes.

17 Q Arrangements were made then for his arraignment
18 on the following day, correct?

19 A That's correct.

20 Q Did you come on the following day?

21 A No, sir.

22 Q Was there any discussion of Mr. Allen getting
23 a lawyer?

24 A I don't recall, sir.
25

1
2 Q Don't you remember someone suggested to him that
3 he had a right to get a lawyer?

4 A There probably was, but I don't recall specifically.

5 Q That was January 15, 1974, right?

6 A Right, sir.

7 Q Less than a year ago?

8 A Yes.

9 MR. GOULD: I have no further questions.

10 MR. FELDSHUH: One question.

11 CROSS-EXAMINATION

12 BY MR. FELDSHUH:

13 Q Mr.Gray, don't you keep notes and memoranda of
14 your various activities?

15 A Only based on --

16 Q Sorry, keep your voice --

17 A Yes, we do, generally, yes.

18 Q Do you keep it in a book?

19 A Yes.

20 Q Do you have that book here with you?

21 A No, sir.

22 Q Did you make any notation with regard to what
23 transpired on January 15, 1974?

24 A Only the fact that we arrested Mr. Allen and the
25 case number, that is all.

1 hpb-12 Gray-cross 3060

2 Q No indication as to the time you spent, what
3 Mr. Allen said?

4 A Not specifically with Mr. Allen. Only specific
5 as to the hours I worked that day.

6 Q That is all you put down in your book, is that
7 right, sir?

8 A Yes, sir.

9 Q When was the last time you looked at this then?

10 A Pardon?

11 Q When was the last time you looked at this entry?

12 A The other day.

13

14

15

16

17

18

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1 qb-1

Gray-cross
Doonan-direct

3061

2 Q And all it had in it was what you just told his
3 Honor and the jury, is that right?

4 A Yes.

5 MR. FELDSHUH: No further questions.

6 MR. SORKIN: I have no further questions.

7 THE COURT: Thank you, Mr. Gray, you may be excused.
8 (Witness excused.)

9 MR. SORKIN: The Government calls Thomas Doonan,
10 your Honor.

11 T H O M A S D O O N A N recalled as a witness in
12 rebuttal, having been previously sworn, was examined
13 and testified as follows:

14 THE COURT: Proceed, Mr. Sorkin.

15 DIRECT EXAMINATION

16 BY MR. SORKIN:

17 Q Mr. Doonan, you heard Mr. Allen testify, is that
18 correct?

19 A Yes.

20 Q Mr. Doonan, did you at any time ever threaten
21 to plant narcotics on Mr. Allen's person, in his apartment,
22 in his car or any place, sir?

23 A No.

24 Q Mr. Doonan, let me show you what has previously
25

1
2 been marked as Government Exhibit 122.

3 A Yes.

4 Q Do you recall seeing those documents?

5 A Yes.

6 Q Did someone give you those --

7 MR. GOULD: May I see what the witness has got?

8 MR. SORKIN: Surely.

9 MR. GOULD: This is 122 for identification?

10 MR. SORKIN: Yes, I said that.

11 MR. GOULD: I am sorry, I misunderstood.

12 Q Mr. Doonan, do you recall seeing these documents?

13 A Yes.

14 Q When did you first see these documents, Exhibit
15 122 for identification?

16 A March 23, 1974.

17 Q Where did you see them for the first time?

18 A In my office, Room 3002, the thirtieth floor.

19 Q Of this building?

20 A Yes.

21 Q Did anyone give you these documents?

22 A Yes.

23 Q Who gave them to you?

24 A Jerome Allen.

25 MR. SORKIN: We offer Government Exhibit 122 in

1 evidence.

2
3 MR. GOULD: I object to them as being collateral
4 matter. They don't bear on this case. They don't have any-
5 thing to do with this case.

6 THE COURT: You remember this subject came up
7 during the testimony of Mr. Allen.

8 MR. GOULD: I know it did. I wonder to what
9 lengths we go to collateral impeachment of a witness.

10 THE COURT: I don't know what you mean by
11 collateral impeachment.

12 MR. GOULD: I mean showing things that the
13 Government contends were untrue in his testimony by extrinsic
14 evidence, by rebuttal witnesses and so on.

15 THE COURT: I am sorry, I disagree. I am
16 going to allow this. That will be received.

xxx 17 (Government Exhibit 122 was received in
18 evidence.)

19 MR. SORKIN: I would like to pass these around to
20 the jury, your Honor.

21 MR. GOULD: Will you bear with me one minute,
22 your Honor, while we check something?

23 THE COURT: Surely.

24 (Pause.)

25 MR. GOULD: I think that Allen's testimony on

1 these papers when he was shown it, and we will check it, was
2 that he didn't have them in '69.

3 THE COURT: He didn't what?

4 MR. GOULD: He didn't have possession of these
5 papers in 1969.

6 THE COURT: I am not saying that he did. That
7 is not the postulate or basis upon which I am receiving
8 the material.

9 MR. GOULD: I don't think he testified that
10 he didn't have them in 1974.

11 THE COURT: I have something else in mind that
12 he did say and that he did not say. I don't want to digress
13 on it. You are perfectly at liberty to check the record.
14 Show me if I am wrong, but my recollection is that there is
15 a basis for this and I am going to allow it.

16 MR. GOULD: It is not worth wrangling over.

17 THE COURT: I don't want to wrangle. Take
18 your time and if you want to point out the transcript I will
19 hear you. For the moment I am receiving it.

20 Go ahead.

21 Q Mr. Doonan, let me direct your attention to January
22 15, 1974. Could you tell us, please, Mr. Doonan, when
23 you left the office that evening?

24 A 9:00 P.M.

MR. GOULD: I object to this. The testimony is he wasn't there.

THE COURT: I agree. I don't know what this is all about either, but we will find out. Go ahead and we will see what happens.

Q I am talking about the office, your office of this building, when did you leave here?

A 9:00 P.M.

Q Mr. Doonan, did you observe when Inspector Slavinsky and Inspector Gray left the office?

A No, I did not.

Q Where were you between approximately 7:00 and 9:00?

A I was working. I was assisting Mr. Elliot Sagor, another Assistant U.S. Attorney on the third floor, Room 309.

Q Where is Mr. Sagor's office in relation to Sorkin's office?

A Approximately 60 or 70 feet away, 80 feet away.

Q Did you have any occasion, Mr. Doonan, to come into my office that evening?

A Yes.

Q Was anyone in my office from approximately 7:15 until the time you left at 9:00?

1 qb-6

Doonan-direct

3066

cross

2 A No, there was no one in your office.

3 MR. SORKIN: If I may just have one moment,
4 your Honor.

5 (Pause.)

6 MR. SORKIN: I have no further questions.

7 CROSS-EXAMINATION

8 BY MR. GOULD:

9 Q You testified that you never threatened to plant
10 narcotics on Mr. Allen's person or his car or anything like
11 that?

12 A That is correct.

13 Q Did you ever discuss the subject of narcotics
14 with him?

15 A With Mr. Allen?

16 Q That's right.

17 A Yes, I did.

18 Q What was the occasion for that?

19 A The occasion was January 23, 1974, and March 6,
20 1974, I asked him what he had written in the letter and why
21 he had written it and he told me that Mr. Stoller and Mr.
22 Herbert asked him to write the letters and he told me that
23 Mr. Stoller asked him to put the words "narcotics" in the
24 letters.

25 He also told me other things.

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Q Did you report that?

A It is written in a report and it is dated January 23 and there are four people signing it.

Q And he told you Stoller. Anybody else?

A He mentioned Herbert's name. He said that Herbert and Stoller had asked him to write the letters. He stated that Stoller had told him to write the narcotics in the letter and that Stoller had asked -- there was another matter other than narcotics. Two other matters other than narcotics.

Q How about Glen Allen, did you ever discuss the subject of narcotics with him?

A Yes, I did.

Q What was the occasion for that?

A It happened just prior to his testifying here. We had heard a rumor that he was going to be forced to testify because someone had indicated that he had been arrested for narcotics or had a narcotics rap on him.

We called him in and asked him if there was any truth to the rumor and he said no. We told him at no occasion --

Q Who is we?

A Mr. Sorkin and myself.

Q Where did this conversation take place?

See 3068

1 A You didn't let me finish my first answer.

2 Q You just answer my questions, Mr. Doonan.

3 MR. SORKIN: I don't think Mr. Doonan was
4 through.

5 MR. GOULD: He was through with answering my
6 questions. I don't care what else he has been primed to
7 say.

8 MR. SORKIN: Your Honor, that is uncalled for and
9 Mr. Gould has been doing it for the past six weeks in this
10 case.

11 THE COURT: Gentlemen, please. You both feel free
12 to comment but then you won't let me respond, which only
13 points up the rhetorical nature of this last exchange, I
14 fear.

15 Mr. Reporter, would you please read the last
16 question and the answer of Mr. Doonand.

17 (Record read.)

18 THE COURT: Go ahead and finish.

19 A We told him under no circumstances would we
20 ever do something like that. We assured him we were above
21 that and we had no knowledge that he was involved in any
22 narcotics situation.

23 He thanked us for that and he left.

24 Q Where did this conversation take place?
25

1

A In Mr. Sorkin's office, Room 301.

2

3

Q And you know the date?

4

A I don't know the exact date.

5

Q Was it during this trial or after?

6

A Yes, it was.

7

Q And you say you called him in and discussed this
with him?

8

9

A Yes.

10

Q Is that what you said, you called him in and
discussed this subject with him?

11

12

A He was sitting out in the hall, in the reception
area. We asked him in. We called him in.

13

14

Q Was this on the day after his mother had testified
in this case?

15

16

A I think it was prior to both of them testifying.
In fact, Mr. Allen mentioned it on the stand about this con-
versation.

17

18

19

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Doonan-cross

3070

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MR.GOULD: I move to strike that out.

3

THE COURT: Yes, that will be stricken.

4

Q Now, sir, were you present at a conversation in the witness room between Mr. Sorkin and Glen Allen in which the subject of narcotics was discussed?

5

6

A No.

7

Q Did you know of such a conversation?

8

A No.

9

Q So we have the --

10

MR. SORKIN: Your Honor, I am not sure

11

if there is any evidence that there was such a conversation.

12

13

MR. GOULD: I think there is. I will be glad to read it.

14

15

MR. SORKIN: I will take Mr. Gould's representation.

16

17

MR.GOULD: I prefer he didn't. I would like to argue this one out. I don't ask questions like that out of the top of my head.

18

19

MR. SORKIN: I am not suggesting that.

20

THE COURT: Then let us go ahead instead of interrupting. What is your question, Mr. Gould?

21

22

Q Were you present in Mr. Sorkin's office on January 16th during an interrogation of Jerome Allen?

23

24

1
2 A First of all, I don't know if there was an
3 interrogation of Jerome Allen on that date. I wasn't
4 present in Mr. Sorkin's office. I don't know.

5 Q You remember the occasion of Mr. Allen's arrest,
6 do you not?

7 A Yes.

8 Q And you remember that you were working on the
9 case, were you not?

10 A Then?

11 Q Yes.

12 A You are talking about Mr. Sorkin's matter?

13 Q In this case.

14 A No, I was not.

15 Q When did you first start to work on this case
16 of Training With the Pros?

17 A I would say some time in the fall of 1973.

18 Q '73?

19 A Yes, sir.

20 Q You know when Mr. Allen came back, when he was
21 arrested?

22 A Do I know?

23 Q Yes.

24 A Yes, I know it was January 15th.

25 Q 1974?

1 jqbr 3 Doonan-cross

2 A Right.

3 A Weren't you present at any interrogations of
4 Mr. Allen from then on?

5 A Yes, I was.

6 Q Is there any way you can refresh your recol-
7 lection as to whether you were present at an interrogation on
8 January 16th?

9 A No, I was not, if there was such an interro-
10 gation, sir.

11 Q You know you weren't there?

12 A Yes, I know I was not there. I was working
13 with Mr. Sagor.

14 MR. GOULD: I have no further questions.

15 MR. FELDSHUB: No questions.

16 THE COURT: Mr. Sorkin?

17 MR. SORKIN: No questions, your Honor.

18 THE COURT: Mr. Gould, Officer Antonelli has some-
19 thing for you.

20 MR. SORKIN: I have no further questions of
21 Mr. Doonan, your Honor.

22 THE COURT: You may step down.

23 (Witness excused.)

24 MR. GOULD: Your Honor, the government concedes
25 that on the night of the 16th of January Mr. Sorkin left the

1 jabr 4

2 office at 7:55 p.m. according to the record that has been
3 produced by Sargeant Antonelli.

4 MR. SORKIN: I concede that, your Honor.

5 THE COURT: That is on the night of the
6 15th --

7 MR. GOULD: The 16th, your Honor.

8 THE COURT: All right, Mr. Sorkin.

9 MR. SORKIN: We have no further witnesses in
10 rebuttal, your Honor.

11 THE COURT: There is the matter of the other
12 evidence?

13 MR. SORKIN: We submitted certain legal matters,
14 your Honor, this morning.

15 MR. GOULD: If your Honor please, with respect
16 to that Exhibit 122 --

17 THE COURT: Mr. Gould, I don't know if you have
18 just heard this interchange. I am going to excuse the
19 jury because there is some other evidence about which
20 there is a dispute.

21 Rather than keep the jury sitting here while
22 we try to resolve that I am going to ask them to take
23 a recess.

24 Ladies and gentlemen, you may take a recess.
25 I don't know how long it will be but I will try to send

1 in a message with Mr. Bowes if I think it is longer than what
2 I think it will be.
3

4 (Jury left the courtroom.)

5 THE COURT: What is it you started to say?

6 MR. GOULD: I withdraw it. They found some
7 other testimony.

8 In view of your Honor's ruling on 122 I am
9 not going to make any further point about it. I understand
10 the ruling and what was shown to me was changed in the
11 subsequent page.

12 THE COURT: All right.

13 Mr. Sorkin, I have read this material that we
14 received this morning from you and Mr. Edwards and I am a
15 little confused. In what purports to be a memo, I think
16 prepared by you and Mr. Flannery, the government seems
17 to want the Court to strike Allen's testimony about
18 the \$15,000 and so on, the related matters on that sub-
19 ject.

20 MR. SORKIN: That is one alternative, yes,
21 sir.

22 THE COURT: Mr. Edwards' submission, which is
23 in the form of an affidavit and I understand it not intended
24 as such, the proposal is that the Court admit the tape of
25 it over here in Mr. Frank's office and the conversation

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2 between Allen and Frank.

3 MR. SORKIN: I am going to defer on Mr. Edwards
4 on that. I think that our position is what Mr. Edwards has
5 stated in his memo and as an alternative measure we have
6 submitted another proposal. I think on this point since
7 Mr. Edwards is here --

8 THE COURT: Mr. Edwards, can you help me? Which
9 is it that the government is pushing first?

10 MR. EDWARDS: Yes, your Honor, thank you.

11 Your Honor, the thing we want to push is that
12 circumstances have changed and we now feel the law
13 supports us in putting the so-called Allen-Frank tape into
14 evidence. As your Honor is aware since that tape was
15 previously ruled upon Mr. Allen has testified.. We contend
16 that any fair reading of the signifance of Allen's direct
17 testimony is such that the contents of the tape known
18 to everyone in advance before Allen took the stand are
19 substantially at variances with his direct testimony and
20 ought to be admitted to impeach his testimony under
21 the authority of Harris v. the United States and although
22 Harris involved an alleged Miranda violation the Second
23 Circuit case I site the following it indicates that
24 it really makes no difference whether it is a Miranda viola-
25 tion or some other alleged constitutional violation that

1 enabled the government to obtain the impeaching evidence.

2 THE COURT: I have no quarrel with that. I think
3 the type of case presented such as Harris and then there
4 were one or two from this circuit, in fact the case of Vine
5 which went up at the same time as Harris, but the difficulty
6 is none of those deal with the odd situation we have here.
7 In other words, Allen is not a defendant on trial,
8 which perhaps is a distinction which is of no considerable
9 moment, I would agree. The real concern I have is that this
10 tape could be construed as showing knowledge of guilt by Mr.
11 Frank in respect to the basic counts of the indictment.
12

13 MR. EDWARDS: No question, your Honor, and I am
14 prepared to respond to that. I think that is a problem
15 which the defendnats have created for themselves, if I may
16 say so. The law as under Harris and under the other cases that
17 no matter how directly the impeaching evidence involves the
18 crimes themselves it nonetheless should come in if the
19 defendants opened the door. There is no question here that
20 the defendant Stoller has opened the door. He put Allen
21 on the stand, and to admitted tape in order to impeach the
22 credibility of Jerry Allen I wuld submit there is not even
23 any issue where Stollen is concerned.

24 May I turn to the defendant Frank which I
25 recognize is the question.

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2 THE COURT: I am not concerned with Stoller.

3 MR. EDWARDS: Insofar as Frank is concerned,
4 we have the following picture. First of all, I think
5 it is fair to say that from the entire course of this trial,
6 which your Honor and counsel are more familiar with than I am
7 but I think it is fair to say that this has been a unitary
8 defense between Frank and Stoller and that unless the Court
9 is compelled to the Court should not close its eyes to
10 the situation which I submit is obviously involved here
11 where this man, Allen, has been deliberately called as Stoller's
12 alleged witness rather than Frank's alleged witness simply
13 to create the very situation that we now have.

14 I think I can proceed further than that,
15 however, and point out to your Honor that while Mr. Allen
16 was giving his testimony Mr. Frank, and Mr. Frank's
17 counsel, neither moved for a severance as this situation
18 built up nor did they enter any objections. Furthermore,
19 when Allen was on the stand on a number of occasions --
20 and I have to rely more on Mr. Sorkin's knowledge of the
21 record than my own here, however we cite pages in the
22 transcript where the witness on the stand called by Stoller
23 as a technical matter was in fact having a lot of testimony
24 elicited from him bearing directly on the defense of
25 Frank --

2 THE COURT: No doubt about it.

3 MR. EDWARDS: Without any objection from Frank
4 and testimony furthermore which was really unnecessary
5 to the presentation of Stoller's defense. To continue
6 further, your Honor, it is interesting to me and I submit
7 it is very relevant, something that I saw here this morning
8 when I came into the courtroom, which is that Mr. Feldshuh,
9 the attorney for Mr. Frank, was actively participating
10 in the cross examination of at least one of the witnesses
11 the government called this morning.

12 The only purpose of the testimony this
13 morning was in connection with Jerry Allen's previous
14 testimony and I think that that is one more thing that
15 ties the defendant Frank into the adoption of Allen's
16 testimony upon which the defendant Frank obviously hopes
17 to rely and is relying on the defense of this case.

18 Finally, although this situation is rather
19 unusual I am not wholly without case authority, your Honor,
20 and I do refer your Honor to the Nagelberg opinion which
21 indicates, as I read it -- and I have it here, your Honor,
22 if you wish. May I hand it up?

23 THE COURT: Yes.

24 MR. EDWARD: The citation, I can't read terribly
25 well in this light, 434 F. 2d 585 at 587. This is Second

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2 Circuit 1970. Your Honor, I am directing your attention
3 particularly to head note 4 on page 587.

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5 THE COURT: Yes, that is the classic rule, though,
6 and I wonder if that is really quite dispositive of our
7 problem.

8 MR. EDWARDS: Your Honor, my submission is
9 not that that case is a hundred per cent on all fours.
10 We I am suggesting is that the situation really is highly
11 analagous. One defendant elicits testimony from a
12 witness, in this case, herself, a defendant, which is
13 exculpatry of the other defendant, namely character
14 testimony. The other defendant does nothing. He doesn't
15 move for any severance nor anything else, and then the govern-
16 ment in rebuttal is able to put in testimony contrary
17 to the interests of the second defendant, answering that
18 character testimony which the co-defendant put on concerning
19 a second defendant, and the court justifies this in effect
20 in saying that the first defendant in reality, even though
21 the second defendant didn't call her -- she called herself
22 -- the first defendant in reality has to be seen realistically
23 as a witness for the second defendant on the subject of the
24 second defendant's character. Actually, the analysis is
25 very close.

What I am really suggesting your Honor, is this:

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2 That fortunately, our system and the case law in the
3 Second Circuit and elsewhere, indicates that the Courts
4 will be and can be sufficiently realistic to rule on the
5 basis of the situation that I submit is quite apparent
6 here, that this is a unitary defense. When Jerry Allen
7 who was on the stand testified, Jerry Allen was in effect
8 a witness for Frank, just as much and perhaps more than he was
9 for Stoller and to rule on the technicality, to make one's
10 decision on the basis of a unrealistic technicality involved
11 in the fact that technically it was Stoller who called him to
12 the witness stand, is to permit what I submit -- I know
13 this is rhetoric but I think it is justified -- what
14 I submit is a real outrage here. I don't think the Court --
15 Know the Court does not to permit anything along those
16 lines and I respectfully submit that the law is such that
17 the Court can very safely and very properly look at the
18 realities of this situation and say, in effect to the
19 defendants, okay, gentlemen, this time you are going too
20 far, the door is wide open and these tapes are coming
21 in.

22 THE COURT: I have had occasion to reread again
23 this morning for I don't know how many times the
24 transcript of the testimony of Mr. Frank and as you point
25 out it is a fair comment to say a great deal of exculpating

2 information was elicited by Mr. Gould from Mr. Allen.
3 That is, exculpatory of Martin Frank. I think as a
4 practical matter your argument is sound, that this is really
5 a unitary defensive measure even though he was denominated
6 a witness for Mr. Stoller only. The trouble with the tape
7 is though that it really to me is -- of course, it refuses
8 a great deal of Allen's testimony here which is patently
9 different from what he said on the tape; I understand the
10 force of that. But, also since it deals with Mr. Frank,
11 it goes to the core of the central allegations in the main
12 indictment.

13 That is what concerns me.

14 And, federal courts have been extremely
15 charitable of defendant's rights in this general area.

16 MR. EDWARDS: Your Honor, this is where I say
17 the Harris case really is dispositive and really answers the
18 problem because in Harris, , if your Honor will recall,
19 the impeaching testimony secured in violation of the
20 Constitution, secured in violation, was let in for impeach-
21 ment purposes only and not on the basic issue of guilt
22 or innocence, even though the Court recognized that that
23 impeaching evidence was in fact highly relevant on the central
24 issues in the case of guilt or knnocense.

25 In other words, precisely the situation

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2 we have here with the impeaching material is offered to
3 impeach Allen and here the Court recognizes as the Supreme
4 Court did in Harris, the impeaching evidence goes right
5 to the core issue in the case. Nonetheless, the
6 defendants having done what they had done, the only thing
7 the Court can do is to put that evidence in, tell the jury
8 that they ought to consider it only on the impeachment of
9 Allen, the same as Harris, and recognize the fact yes,
10 it is relevant on the core issue, that the jury is being
11 told to receive it on impeaching.

12 The impeaching evidence went to the central
13 issue of the case in Harris and I can show you other
14 cases, your Honor, where the impeaching evidence went to
15 the central issue of the case in precisely the same manner
16 as it does on Mr. Frank's case here.

17 THE COURT: All right, I understand you.

18 Mr. Gould or Mr. Feldshuh.

19 MR. GOULD: If your Honor pleases, I think
20 this is Mr. Feldshuh's matter to argue, really, but I am
21 disturbed by the suggestion that because I asked any
22 exculpatory questions, exculpatory of the defendant Frank,
23 therefore somehow this becomes a unitary thing and I become
24 Frank's lawyer for the moment. This is a conspiracy case.
25 And, Frank is denominated as a co-conspirator.

1
2 I am within my rights in this, without any such
3 waiver of the specificity of Stoller's position as a
4 defendant in the case. I didn't become Mr. Frank's lawyer.

5 THE COURT: I think that is a different blush
6 on what the government is really saying.

7 As a matter of fact, I don't recall that the
8 government objected when you asked these questions, to
9 tell you the truth. But, be that as it may, they are
10 not accusing you of quite that. What they are saying is,
11 as a practical matter it comes down to a position where
12 the defense made the choice to call Allen.

13 MR. GOULD: Not the defense, your Honor.
14 The defendant Stoller made that decision. There isn't
15 the faintest suggestion that they even concurred in it.
16 But, I don't know that I consulted with anybody or that I had
17 the need to consult with anybody. When they elect to try
18 these men together, they elect to take the consequence
19 of my tactical decision as an advocate to call Allen..

20 THE COURT: The trouble is, here we are put in
21 the position due to the circularity of the case law in
22 this general field over the years, where the government
23 would argue that having successfully persuaded this
24 court to keep out the tape in the first instance and then
25 further the court having been persuaded to direct an

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2 acquittal of Frank, in respect to the obstruction of
3 justice counts or at least the count in which Frank was
4 accused of trying to get Allen to sign a perjurious
5 affidavit and so on and so on, then the government's
6 argument is having had all those successes, the defense was
7 living dangerously by calling Allen as its own witness.
8 But be that as it may I see your point. Mr. Feldshuh.

9 MR. FELDSHUH: Your Honor will note that
10 I didn't cross examine Allen at all and any witness sub-
11 sequent to Allen I didn't cross examine.

12 Once more, I didn't call Mr. Allen. And, when
13 Mr. Allen's testimony is examined, you will find that it
14 includes all these alleged co-conspirators. The fact that
15 part of it has to do with Mr. Frank, is no great thing.
16 You cannot separate that from the rest of the co-conspirators.
17 But, one thing you can separate and that is utterly
18 clear is that I didn't call him and didn't cross examine
19 him.

20 THE COURT: According to the record I can't quarrel
21 with that. At least from what we know here we cannot dispute
22 that.

23 MR. FELDSHUH: Therefore, this concept of
24 spilling over, unitary defense is absolutely wrong in
25 this case. Your Honor, furthermore my reading of Harris

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also indicates what your Honor suggested to Mr. Edwards.
Namely, that Harris was a defendant, an accused.

If Mr. Edwards' situation is adopted all the
government has to do in many cases in order to circumvent
Harris or Massiah, or any of the other cases would be to
come forward and shove a witness on the stand other than
the defendant --

THE COURT: I wish you hadn't said that.
That isn't what happened here. The government didn't shove
Allen on the stand. The government didn't call Allen
for a very good reason.

MR. FELDSHUE: Yes, your Honor, for very good reason
and --

1 pkb-1
2 THE COURT: I wish you hadn't made that argument.
3 Besides, the Government couldn't do this very often in
4 any event, or wouldn't find itself in this position very
5 often because this is somewhat unique, at least in my exper-
6 ience, and I have been around for quite a while now as lawyer
7 and Judge.

8 I don't think I have heard anything like this
9 and I doubt that you and Mr. Gould has. Be that as it may,
10 what you are trying to say is, the Government can't understand
11 these circumstances go so far as now get the tape.

12 MR. FELDSHUH: Exactly so, your Honor. This
13 is a unique situation, singular and I say that reliance upon
14 the fact that this unitary concept of defense is wrong and
15 particularly I was assiduous in not making Allen my witness
16 at all.

17 MR. EDWARDS: Your Honor, may I briefly respond.
18 Number 1, there was no need for Mr. Feldshuh to cross-
19 examine Allen and I think he can rely on that inasmuch as
20 Allen got up and recited a lot of testimony exculpating Mr.
21 Feldshuh's client, which Mr. Feldshuh knew would contradict
22 the tape.

23 Number 2, he participated this very morning
24 in the examination of a rebuttal witness. The only purpose
25 of that rebuttal was in relation to Allen's testimony as we

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know, and therefore in fact Mr. Feldshuh pitched in with regard to Allen's testimony this very morning. The witness who was on the stand a half an hour ago.

Those two points, no need to cross-examine Allen and Number 2, he did cross-examine a rebuttal witness who was called on Allen's testimony, which puts Mr. Feldshuh in as a participant on the Allen testimony and Number 3, again, I respectfully submit that everyone here in this courtroom must recognize the fundamental artificiality of the position that the defendant Frank is taking on this business of this man being Stoller's witness and not his, and I respectfully submit that any reviewing Court can recognize that artificiality from the face of the record in this case, and our law does not require that justice be frustrated through accepting such artificiality.

THE COURT: Do you want to add something?

MR. FELDSHUH: Yes, your Honor, two things. Number 1, with regard to the four questions that I asked this last witness, and they being the only questions, certainly your Honor cannot consider that thereby I adopted Allen as my witness or participated in the product of his testimony.

Number 2, with regard to the argument that Mr. Edwards has just made, with respect to the careful area that your Honor has exercised in insuring that no prejudice shall

1 hkb-3

2 fall upon Mr. Frank, arising out of your Honor's ruling,
3 certainly its impact on this trial cannot be circumvented
4 by the mere fact I asked those four questions.

5 I would think it is patently ridiculous to
6 consider it as such.

7 THE COURT: I would say to you, Mr. Feldshuh,
8 I don't think Mr. Edwards would argue everything turns upon
9 the few brief questions I asked this morning. I think what
10 he is trying to suggest is, if you look at the record as
11 a whole, this was a unitary defense situation, and that
12 that has some practical light at least on what has been
13 going on.

14 MR. GOULD: May I make one observation before
15 your Honor deliberates on this. Let's assume the hypothetical
16 situation that I put Mr. Allen on the stand, and then I
17 stumble into asking him about the conversation on the tape,
18 did you, for example, have a conversation. Or worse, that
19 Mr. Feldshuh by some almost unthinkable professional miscue
20 stumbles into it. Then we might have some merit in this
21 argument that Mr. Edwards makes with such an air of outrage.

22 But, neither of us did that. It was when Mr.
23 Sorkin undertook cross-examination that he deliberately
24 injected the subject into the matter.

25 We never asked about any such conversation. We

1 hkb-4

2 never came remotely near any exculpatory testimony on that.

3 Then the Government deliberately and with the
4 precise intention of trying to open the door on the tape
5 asks the question, and then we object to it and your Honor
6 ruled.

7 So that whatever may be the moral outrage on
8 the part of the Government, the fact is that it was the
9 deliberate act of the Government on the cross-examination
10 of the witness Allen, in referring to the taped conversation.

11 They did it deliberately in an effort to get back
12 to the tap.

13 Now, the consequences of reopening the subject
14 I think are horrendous in this trial. Because if your
15 Honor is going to permit the Government to interrogate Allen
16 now as a recalled witness with respect to the tap, your
17 Honor perforce will have to permit me to cross-examine him
18 with respect to all the circumstances which went into the
19 making of the tape.

20 The spillover into the counts which have already
21 been disposed of is something horrendous.

22 MR. SORKIN: May I be heard in response to that,
23 your Honor?

24 MR. GOULD: I am not finished. I know you are
25 brimming over with energy. I think we might well have the

1 hkb-5

2 problem, if it had been act of the defense in introducing
3 this subject, and I don't use words like trickery the way
4 my friend throws them around.

5 I think it was maybe inadvertent on their part,
6 they didn't realize what they were creating here. But,
7 there is no escape from the conclusion that it was the act
8 of the prosecution and not the act of the defense which in-
9 jected this.

10 Now, are we to be criticized for calling Mr.
11 Allen? The whole thrust of this is there is something
12 morally deficient in --

13 THE COURT: Mr. Gould, let me get to the root
14 of this. According to the transcript and according to my
15 notes, on October 7, on direct by you, Mr. Allen denied ever
16 hearing Martin Frank talk about getting \$15,000 and so on.

17 MR. GOULD: Yes, sir. I have it. It is Page
18 2456, and 2457 of the transcript, and this is a conversation
19 alleged to have taken place by the witness D'Onofrio, in
20 1968.

21 THE COURT: I had the page and now I have lost it.
22 What did you --

23 MR. GOULD: I say the only question remotely
24 related to it is the question at the bottom of Page 2456.

25 THE COURT: I think that is it.

1 hkb-6

2 MR. GOULD: In which I repeated D'Onofrio's
3 testimony and repeated it verbatim. Not with respect to
4 the taped conversation. I would have been out of my mind
5 to refer --

6 THE COURT: Please don't misunderstand me. I
7 am not accusing you and I hope the Government isn't accusing
8 you of deliberately getting into the taped conversation.

9 My point is quite different. My concern is that
10 this man has been allowed to come into this case and to
11 give testimony exculpating a co-defendant without permitting
12 the Government to get at things which seemed to refute him
13 squarely.

14 MR. EDWARDS: If I may, your Honor, I can add
15 some things to what I have already said. You do of course
16 have this situation where on his direct testimony it is
17 elicited from Allen that he doesn't remember his conversations
18 with Frank concerning 15,000, which is almost the entire
19 exclusive subject matter of the tape, the 15,000, the deal
20 between Allen and Frank. But furthermore let me add
21 something further I haven't alluded to yet, your Honor.
22 That is the situation that the defendants have deliberately
23 created goes beyond what I have said so far.

24 Here is the picture as I understand it. They
25 put Allen on the stand and they have Allen testify to what

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2 he has said, that Frank didn't do anything and so forth and
3 so on.

4 They know that Allen has given totally contrary
5 and opposite information to the Government in the past,
6 and they know that the Government will be compelled to cross-
7 examine Allen on those prior inconsistent statements given
8 to the Government. They also know that in responding to that
9 inevitable and highly proper cross-examination by the Government
10 Allen is going to begin to say all these things about the
11 fact that he was doing all this, Sorkin was forcing him to
12 do it and so forth. The next page, the tape also becomes
13 highly relevant in rebutting that. You have to look at
14 the whole chain the defendants put in motion, and I submit
15 anyone reading the record in this case can see this from
16 step to step to step, and there is just nothing that requires
17 this Court to permit them to use the vernacular to get away
18 with this.

19 End 4B

1 qb-1
2 MR. GOULD: You see, your Honor, the thing that
3 bothers me is this air of outrage. Indeed one of the people
4 who participates in this case for the Government said to
5 me the other day, and this is a direct quote, "We didn't
6 think any reputable lawyer would put Allen on the stand."

7 I don't see how any reputable lawyer could have
8 refused to put Allen on the stand. This is one of the actors
9 in this tragedy. If he is available he should have been
10 put on the stand.

11 MR. EDWARDS: I am not attacking Mr. Gould's
12 repute. I am not dealing with any personalities of any
13 kind. This has to do with the admissibility of the evidence
14 we are offering and that is the argument we are offering
15 and I say it is admissible.

16 MR. GOULD: I say the failure of the Government
17 to put Allen on the stand necessitated us putting him on the
18 stand. I say that the duty of the Government is not to
19 get convictions, it is to expose the truth. When they had
20 this man for months and months under their control he either
21 should have been put on the stand as a prosecution witness,
22 he, one of the three or four principal actors --

23 THE COURT: You are talking around the point.
24 You are not really, as far as I can see, hitting the
25 point, at all.

1 qb-2

2 MR. GOULD: I am asked to pay the penalty.

3 THE COURT: I don't understand either one of
4 you. I don't think that is the point. I quite agree with
5 you that accusing the defendants of unprofessional conduct
6 is totally irrelevant. I see nothing in that. I see
7 equally nothing in your response because it goes off the
8 problem.

9 MR. GOULD: I am not concerned with their
10 allegations of unprofessional conduct.

11 THE COURT: I should hope not.

12 MR. GOULD: I am long past the point where I
13 have to match reputations with any of these fellows.

14 Y ou find that amusing?

15 MR. EDWARDS: Yes, really.

16 MR. GOULD: I will match mine with yours any day.
17 I don't think that is very entertaining.

18 THE COURT: Don't respond to it.

19 MR. GOULD: I don't like this kind of thing.

20 THE COURT: I don't either and I am asking you
21 to desist from such talk, as well as Mr. Edwards.

22 MR. GOULD: I am not concerned --

23 THE COURT: If you have something to say about
24 the point, let's hear it.

25 MR. GOULD: I do not think that the Government

1 qb-3

2 can impose penalties on the defendant because Allen was
3 called. I think there was a need to call him and we
4 did not open up the tape, they opened up the tape. That is
5 the last word I am going to say on this subject.

6 THE COURT: All right. Here is what I am going
7 to do. I do not accept these rather bold and extreme
8 characterizations from the Government and from the defense
9 as to what is involved here. I think that more realistic-
10 ally we have a problem which can be briefly described as
11 follows:

12 This Court rightly or wrongly ruled out the Martin
13 Frank-Jerome Allen tape conversation at a time when the
14 real issue had to do with an obstruction of justice count
15 in which the defendant Frank was named and the consequence
16 of obtaining that indictment which obtained that count,
17 the time of the overhear and so on wasn't the doing of the
18 defense or this Court that Allen decided not to cooperate
19 on the eve of trial, and I don't intend to be drawing any
20 great inferences as to what might have gone on behind the
21 scenes and off the record in this case.

22 The real problem is that having made those
23 rulings and then folded it up with a ruling at the behest of
24 the defense to acquit the defendant Frank of obstruction of
25 justice, Allen came in as a witness.

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2 Whether Mr. Gould was professionally sound or un-
3 sound in calling Mr. Allen I think is beside the point. I
4 couldn't care less about it at least in the context of this
5 ruling.

6 The fact is that Allen was called, as I read
7 Pages 2456 and 2457 of the record it is of course true, and
8 no one, least of all the Judge, accuses Mr. Gould to the
9 contrary. It is of course true that he didn't ask about the
10 conversations with Frank which were the subject of the tape.
11 Of course he didn't do that, neither did anybody else. But
12 it is true that he asked him about what D'Onofrio had told
13 us of the November meeting when there was discussion of paying
14 Frank \$15,000 partly in cash, partly in kind, for telling
15 the boys how to do the deal in Training With the Pros. I
16 don't want to put this on a door opening bit. As a former
17 practicing lawyer I used to engage lightly about opening
18 the door, sometimes with success and sometimes not in the
19 doors of this splendid court of ours.

20 I am not sure that is totally helpful in any
21 analysis. The real problem is here that Allen came in
22 and both on direct and cross gave evidence which tends
23 to be exculpatory of Mr. Frank, and at the same time is
24 flatly in contradiction with statements that he made to
25 Frank and Frank made to him in the tape conversations.

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2 Consequently the jury so far is being kept from
3 hearing all of the materials at hand. In my opinion this is
4 one more example of how the American criminal justice system
5 is in the position of withholding, due to various rules of
6 exclusion and protection of individual rights, evidence
7 which is highly irrelevant and which cannot be brought
8 to the attention of the fact finder because of these rules.

9 Harris versus New York recognized this problem
10 generally, but the facts in Harris really aren't the facts
11 of this case and that troubles me. My own analysis suggests
12 that under these highly unusual circumstances which are not
13 quite the same as Harris and most of the cases I have read
14 since Harris in this and other Circuits, that something
15 has to be done to aid the Government.

16 I am concerned, however, about the overwhelming
17 impact of the tape and the transcript of the Frank-Allen
18 overhear. I have given some thought to the possibility to
19 redacting some of the more damaging admissions, as I read
20 them, of Mr. Frank.

21 The only trouble with that is that the whole
22 subject of the \$15,000 pretty much permeates the conversation
23 between Frank and Allen.

24 Therefore, to do any reaction would fall between
25 two stools. On the one hand it would make the tape

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2 unintelligible or on the other hand, it is liable to end
3 up just as prejudicial to Frank as one can possibly make
4 it under the circumstances.

5 So I am going to grant the Government's applica-
6 tion to this extent: I am going to accept their alternative
7 ground and instruct the jury they cannot consider any testi-
8 mony which Mr. Allen gave which tended to deal with the \$15,000
9 payment which Allen denied or any other exculpatory evidence
10 which Allen purportedly gave to Frank.

11 In other words, I am doing what I think is a
12 balancing operation, trying to protect Frank to the extent that
13 we can, and to the other extent trying to prevent Allen
14 from intruding into this trial something which really is
15 basically unfair and inapposite to the facts as we know them.

16 MR. EDWARDS: Your Honor, might I request or
17 might I first submit that that relief which your Honor
18 proposes to provide us with is really less than we should
19 have and I would submit that if the alternative is to elim-
20 inate Allen's testimony, all of Allen's testimony ought to be
21 eliminated because the impeachment material that we are
22 entitled to put in to impeach Allen really would impeach his
23 entire line of testimony.

24 THE COURT: I know you said that was a primary
25 relief and perhaps you are right. But in the few minutes

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2 allotted to me in what I consider a most unusual situation
3 that misses the point. My principal concern, as you
4 were frank to admit in your argument, and you have seen this,
5 is the spillover effect on the indictment in chief as against
6 Frank.

7 Second of all, I do not think it is fair to
8 Stoller, who ostensibly called this man Allen, to deprive him
9 of the benefit of the testimony even though you and I and
10 everybody else from here to Moscow may think Allen is telling
11 falsehoods, that may be, but I don't think that is the
12 point. I think Stoller is entitled to call the man and
13 the Government never suggested to me when Allen was called
14 by Mr. Gould on behalf of Mr. Stoller that that was not so.
15 Therefore, to go ahead and take the amazing step of striking
16 all of Allen's testimony I think would be uncalled for. We
17 would only raise further problems.

18 Therefore, the ruling stands. I am very
19 sympathetic to the Government because I have made my position
20 clear as a practical matter that my view of Allen and what
21 he has done here is not necessarily very flattering as a
22 practical matter, but that is not the ruling that I can make
23 as the Court or an agent of the Court.

24 I have to be concerned about the law and the
25 problem and that is why I made the ruling I did.

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2 In other words, to exclude everything that
3 Allen testified to would be cutting down the apple tree in
4 order to get rid of the problem affecting only a branch
5 or two and that is not in my judgment necessary or fair to
6 Stoller.

7 So I am going to instruct this jury most pointedly
8 that they are not to consider any of the testimony which
9 Allen Purported to give exculpating Frank in respect to
10 the advice he gave and for the business of the \$15,000 which
11 he is alleged to have received and that they will disregard
12 that.

13 MR. EDWARDS: One further request, if I may.
14 Within the paramaters of your Honor's ruling as I understand
15 it, I am not sufficiently familiar with the record, however,
16 if Mr. Sorkin can show you other portions of Allen's
17 testimony that appear to relate really only to Frank, we would
18 move that you tell the jury also to disregard those other
19 portions of Allen's testimony that do nothing other than
20 to exculpate Frank since it is for Frank's protection that
21 this tape be kept out and Stoller has no standing on that.

22 THE COURT: Stoller has no standing?

23 MR. EDWARDS: Because he put the witness on
24 the stand and he had no Massiah problem in the first place.
25 What I am saying is, your Honor -- and I don't mean to lead

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2 you off on anything, your Honor. What I am saying is that
3 in addition to telling the jury to disregard the testimony
4 concerning this \$15,000 and so forth, it seems to me that
5 Frank also should not receive the benefit of other testimony
6 exculpating him alone.

7 THE COURT: I said I was going to strike --
8 and I am going to tell the jury that I am striking any evi-
9 dence which Mr Frank purported to give to exculpate Frank.

10 MR. EDWARDS: Thank you, your Honor.

11 THE COURT: Most particularly in regard to the
12 business of this meeting which really is central to the whole
13 thing. I quite agree with you.

14 MR. EDWARDS: Thank you.

15 MR. FELDSHUH: During the course of my summation
16 I never intended --

17 THE COURT: I can't hear you.

18 MR. FELDSHUH: I am sorry. I say, in the course
19 of my summation I understand that based upon your Honor's
20 ruling, I will not refer to or discuss with the jury any of
21 the exculpatory remarks that Allen may have made.

22 THE COURT: That is correct.

23 MR. FELDSHUH: I shall abide with your Honor's
24 ruling in that regard though I may respectfully disagree with
25 it. However, I shall abide with it.

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2 THE COURT: You are quite correct. You have
3 nevertheless an exception to this ruling as does anyone
4 else involved.

5 MR.FELDSHUH: One further point, your Honor.

6 In connection with the means paragraph of the
7 indictment, referring to paragraph 5, subparagraph R,
8 which makes a specific refernece to the \$15,000 --

9 MR. EDWARDS: Your Honor, may I be excused?

10 THE COURT: Yes, thank you, Mr. Edwards.

11 MR. EDWARDS: Thank you, your Honor.

12 THE COURT: Just a moment here.

13 You are quite right. At the end of the govern-
14 ment's case, the government consented to dismissal of allega-
15 tions in paragraphs J and R.

16 MR. FELDSHUH: Right. And R specifically addresses
17 itself to the \$15,000. I am asking your Honor for guidance
18 in that connection as to the matter of handling R and the
19 fact that it is no longer in the indictment.

20 THE COURT: I don't quite agree with you. J
21 doesn't read that way to me.

22 MR.FELDSHUH: I said R, your Honor, if your
23 Honor please.

24 THE COURT: You are correct.

25 What about that, Mr. Sorkin?

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2 MR. SORKIN: Your Honor, I can't argue any other
3 position. I don't think that the government has changed
4 its position. I don't think that we have proven that
5 Mr. Frank did receive the \$15,000.

6 On the other hand, in light of your Honor's
7 ruling, there is no proof that he didn't. Obviously since
8 the government has the burden I suppose Mr. Feldshuh would
9 be properly entitled to argue that there is no proof that he
10 received the \$15,000. I don't see Mr. Feldshuh's problem.

11 MR. FELDSHUH: I will only go to that extent.

12 THE COURT: I think that is fair. If that is
13 the problem, I quite agree with you.

14 MR. FELDSHUH: I didn't want to incur your
15 Honor's feeling that I might violate your rulings.

16 THE COURT: All I am saying is that you will
17 not be entitled to rely on any exculpatory material that
18 Allen gave in his testimony on direct or cross.

19 MR. FELDSHUH: Very well.

20 THE COURT: Certainly you have to make this
21 point particularly since the government as you say consented
22 to strike subparagraph R of paragraph 5 of the first part
23 of the indictment.

24 MR. FELDSHUH: Thank you, your Honor.

25 THE COURT: Does everybody rest or are we going

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2 to hear from other witnesses?

3 MR. GOULD: How about the government?

4 MR.SORKIN: We don't have any other witnesses.

5 MR. GOULD: The government rests then?

6 THE COURT: The government is resting, right,

7 Mr. Sorkin?

8 MR.SORKIN:: That is correct, your Honor.

9 MR. GOULD: May we have just two minutes, your
10 Honor.

11 (Pause.)

12 MR. GOULD: If your Honor please, I would like
13 to avoid calling a witness for this but apparently it got
14 to the jury that at the time of Mr. Stoller's arrest the
15 government applied for \$750,000 in bail.

16 THE COURT: That is news to me. How did it get
17 to the jury?

18 MR. GOULD: There is a refernece to it in a
19 letter.

20 MR. SORKIN: I don't think he referred to it
21 in a letter. I think he was testifying about it on the stand
22 and he mentioned that the government had --

23 MR. GOULD: I think he said it.

24 It was one of those things he blurted out.

25 We didnt' try to elicit it.

2 At any rate, actually it was subsequently
3 reduced to a recognizance bond?

4 MR. SORKIN: The original one was \$100,000 cash
5 or surety and I think in May when we had a pretrial confer-
6 ence Mr. Gould made the application, and your Honor granted
7 it, that it would be \$100,000 personal recognizance secured
8 by five or ten thousand cash, your Honor.

9 THE COURT: Right.

10 MR. GOULD: All I want to do is get a con-
11 cession in front of the jury that Stoller's bail -- I don't
12 know it is even worth doing.

13 MR. SORKIN: I will concede that.

14 THE COURT: We certainly don't have to call a
15 witness for that.

16 MR. GOULD: I wuld think not.

17 THE COURT: What is it you want to do, gentlemen?

18 MR. GOULD: I simply want the government to
19 concede that Stoller's bail is whatever the fact is. .

20 THE COURT: I will take judicial notice of
21 that if it comes down to that. But you are going to have
22 to ask me to do it.

23 MR. GOULD: Why don't we do it that way and maybe
24 your Honor can dispose of it in the course of the charge.

25 THE COURT: That is one more detail that I would

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2 rather nto have to have responsibility of.

3 If you think this is important I think you should
4 ask me to take judicial notice that the bail is whatever
5 it is.

6 MR. GOULD: All right. Let us do it that way.
7 Very well.

8 THE COURT: While we have taken this lengthy
9 recess, can we get down to this, I haven't received any
10 requests to charge from the defendants. I have received
11 voluminous requests from the government.

12 MR. FELDSHUH: I have my requests, your Honor.

13 THE COURT: Fine, but I haven't seen them
14 yet and I have to rule on them before you sum up.

15 THE COURT: We will have to take out half
16 a day. Here I am suddenly jammed up with --

17 MR. FELDSHUH: We first got government's
18 requests Friday and we worked over the weekend to get these
19 to you this morning.

20 THE COURT: I don't even have yours, Mr.
21 Feldshugh.

22 MR. FELDSHUH: That is mine.

23 MR. GOULD: Mine are worse.

24 THE COURT: I am sorry, they are yours.

25 I am going to have to go through these which means

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2 the jury will have to sit around for another hour.

3 I don't want you to start your closing argument
4 without my rulings on this.

5 MR. FELDSHUH: WE also have motions at the end
6 of the government's case. We both rest.

7 MR. GOULD: I am going to rest.

8 THE COURT: Mr. Gould, do you have your requests?

9 MR. GOULD: Mr. Grimes is putting numbers on them,
10 your Honor.

11 THE COURT: I think we would be much better
12 off sending this jury out to lunch. This is going to take
13 me a long time. I spent hours going over the government's
14 and yours is just as thick as the government.

15 MR. FELDSHUH: I am sorry, sir.

16 MR. GOULD: I think probably there is a good
17 deal of duplication between Mr. Feldshuh's and ours but that
18 couldn't be avoided.

19 THE COURT: I am not blaming you for that.

20 It is just uncomfortable with all the other
21 delays to putup with this one.

22 MR. FELDSHUH: In the meantime, the defense
23 rests. Can we go forward with our motions at the end
24 of the entire case?.

25 THE COURT: Yes, but I am waiting for these great

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2 men at the back table to get the requests up here. I read
3 fairly fast if I can just get something to read.

4 Let us hear your motions, Mr. Feldshuh.

5 MR. FELDSHUH: Sir, I particularly address myself
6 to the mail fraud counts, namely 7 through 10. In this
7 connection, your Honor, I state that the conspiracy or
8 the alleged conspiracy as proven by the government insofar
9 as it had anything to do with the defendant Frank was the
10 concept of the stock of moving out to Allen, Stoller and
11 D'Onofrio and blowing off, so to speak, to Bonavia and
12 Weissinger. As far as I can see, your Honor, that was
13 the end of the conspiracy. Anything else further than that
14 and we have only got one little statement in the record, and
15 that is where D'Onofrio says something about rescuing
16 Bonavia and WEissinger. But rescuing Bonavia and
17 WEissinger was no part of the conspiracy to blow the stock
18 into Bonavia and Weissinger.

19 At that point, your Honor, I respectfully
20 submit that the acts in furtherance of the conspiracy
21 as far as Frank is concerned stopped. In that connection,
22 your Honor, of course I refer to the very classic case of
23 Parr against the United States.

24 THE COURT: You made your point without going
25 into the law. I have been a little concerned about this

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2 too.

3 What about that, Mr. Sorkin?

4 I don't quite get the picture on this.

5 MR. SORKIN: Your Honor, when Frank is first
6 informed back in September that they are going to do
7 another deal, this is after they got back from the Baur au
8 Lac, he says "How are you going to do it," and he
9 says "We are going to run it the same as the other deal
10 and blow it off to Weissinger and Bonavia." They don't
11 meet in November and have another discussion about this.

12 They then have discussions on February 2nd with
13 respect to the hundred shareholders and then they have
14 discussions in March with respect to the receipts.

15 It seems to me that it is clear from the record
16 that Mr. Frank knew or should have known that when the
17 stock was to be blow off to Weissinger, to rescue them
18 they had to be rescued by touting the stock to market
19 makers, to brokers, to retail houses and in touting the
20 stock to these retail houses clearly the mails were
21 going to be used to send these confirmations out. That was
22 the whole essence of the scheme right from the time Mr. Frank
23 learned of the scheme back in November 1963. Under the
24 law it is clear Mr. Frank should be chargeable under Counts 7
25 through 10.

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2 THE COURT: All right.

3 MR.FELDSHUH: If your Honor wishes me to respond
4 to that issue do so.

5 The evidence is clear as ar as Mr. Frank is
6 concerned that he had nothing to do with the offering
7 circular and it has been so conceded by the government.

8 MR.SORKIN: It is not conceded by the government,
9 your Honor.

10 MR. FELDSHUH: They had nothing to do with the
11 offering circular?

12 MR. SORKIN: It is not conceded to the extent
13 he didn't sit down and write it up.

14 Mr. Frank was the artchitect of not putting in the
15 circular who the underwriters --

16 THE COURT: This doesn't help. What is your
17 point?

18 MR.FELDSHUH: As far as the alleged conspiracy
19 is concerned, Mr. Frank's participation in any conspiracy --
20 and the conspiracy itself was to blow off the stock to
21 Weissinger and Bonavia. That was the ultimate aim of that
22 conspiracy and nothing else.

23 Mr.Frank had nothing to do with touting the
24 stock or envisioning that Weissiner and Bonavia would be
25 rescued and predicated upon the counts under the mail

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2 fraud --

3 THE COURT: I think that is a fair argument
4 factually but I don't think that I am going to direct an ac-
5 quittal. I think the government is entitled to make the
6 argument from the totality of the evidence.

7 But I think you may have a point factually.
8 That is up to the jury. I am going to deny your motions
9 once again on those counts.

10 MR. FELDSHUGH: Your Honor, will recall that
11 Parr said specifically that any acts of mailing subsequent
12 to the attainment of the objects of the conspiracy do not
13 make a predicate for the mail fraud section 1341 and it is
14 upon that that I base it.

15 Even if Frank envisioned that the confirmations
16 would be sent out, nevertheless, as far as he was concerned,
17 the end of the conspiracy was the blowing off of the stock.

18 May I respectfully submit to your Honor --

19 THE COURT: I think that takes a bit of a
20 narrow view, doesn't it?

21 MR. FELDSHUGH: No, it doesn't. It made
22 no difference under the testimony of this case whether
23 the stock was touted or not touted. If your Honor will recall
24 if Frank was the architect of any scheme it was the scheme
25

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of creating nominees to take down the stuff on the original offering.

THE COURT: That is not the point.

The conspiracy does allege that it was part of the scheme that Stoller and Allen would cause brokers to recommend Training so as to permit Bonavia and Muir Weissinger to sell at a profit.

MR. FELDSHUH: That is the indictment, sir. We are beyond that. We are in the trial.

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2 THE COURT: But that takes care of the point, as
3 I see it. Motion denied.

4 What I think you are really saying is that
5 factually there is no particular evidence that Frank had
6 any part in this, and maybe the jury will accept that.

7 MR. FELDSHUH: Your Honor, is it not the fact
8 that there is a definite and distinct Chinese wall between
9 Weissinger and D'Onofrio, and the so-called rescue operation

10 THE COURT: I understand you, Mr. Feldshuh but
11 I say as a matter of law I don't think you are correct.

12 So, for the third time, I am declining the
13 motions and taking Counts 7 through 10.

14 Now, what else?

15 MR. FELDSHUH: I renew all the motions, without
16 belaboring them any further, your Honor, as were made at the
17 end of the government's case and repeat them now at the
18 end of the entire case with regard to Counts 2 through 6.

19 THE COURT: And I make the same ruling. Motions
20 are denied.

21 MR. FELDSHUH: Also as to Count 1, your Honor.

22 THE COURT: Count 1 the same ruling.

23 Mr. Gould.

24 MR. GOULD: If your Honor pleases, I would like
25 to renew all the motions that were made at the close of the

government's case. I am going to try to be very brief because I don't want to reargue what was said.

First of all, the motion to dismiss for the preindictment delay which I argued at some length.

I think that the case in its present stage emphasises even more than it did at the close of the government's case the prejudice which has resulted from the defendants through the absence of Mr. Morse. I remember when we argued this motion to your Honor earlier, your Honor took the position there was a possibility that Morse's testimony before the SEC may not even have been true.

Of course that is right, it may not. Nevertheless, I don't think at this stage of the case we can entertain ourselves in any way with doubts about Mr. Morse's credibility.

If Moss were alive today and we did call him as a witness, then it would be for the jury to judge his credibility, which of course can't be done now.

I would like to remind your Honor that D'Onofrio testified at length with respect to several meetings with Morse, regarding Training and its predecessor. These go back to September and October, I think '67.

THE COURT: Yes, but it was not certainly and kind of testimony that was very much more than background

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2 really. In any case --

3 MR.GOULD: Your Honor, I will come to
4 Bonavia in a moment. You will remember he testified he
5 met with Morse-- this is D'Onofrio -- he met with Morse with
6 respect to the original indication letter, Government's 4.
7 D'Onofrio said he got the corporate books from Marilyn
8 Herzfeld and he saw to it that Exhibit 4 was
9 destroyed. I am referring to his testimony at page 158 and
10 159. On September 10th, Mr. D'Onofrio, in the September 10th
11 transcript he said that "At the meeting in July '69, I
12 engaged Mr.Morse under duress to retain the firm of
13 Feldshuh & Frank."

14 I am not arguing this for Frank. I am arguing
15 this for Stoller who is supposed to be a co-conspirator.
16 Certainly if Morse were alive, he would contradict,
17 substantiate or at the very least clarify some of these
18 statements that I suggest D'Onofrio made up. The jury
19 would have heard what Morse has got to say about this.
20 The further importance of Morse's testimony is emphasized I think
21 by the fact that everybody that was called as a witness by us
22 or by the government tends to refute D'Onofrio's story in
23 very important particulars. I need not remind your Honor
24 that both Allen and Pfingst denied they were at the June
25 meeting. Indeed, the proof is and it is not even contested

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2 by the government that Allen wasn't in Europe there.
3 Pfingst recalls it. Pfingst testified he had nothing
4 to do with the indication letter and clearly refutes what
5 D'Onofrio says.

6 There again we must pause for a moment to
7 consider what the importance of Morse would have been on that.
8 This was Morse could. Morse was the fellow who knew
9 what was going on.

10 THE COURT: I am sorry, I am not at all
11 persuaded with that. We went through this ad nauseum.
12 Morse's role, I don't see as being anywhere near what you
13 attribute it to be because what happened on the face of the
14 matter. Whether you take his testimony at the SEC as
15 correct or not.

16 MR. GOULD: I think if your Honor takes his
17 testimony at the SEC as correct, it is exculpatory.

18 THE COURT: All of this is largely theoretical
19 and bottomed on the proposition the man for reasons
20 which we do not know happens to be deceased.

21 MR. GOULD: Then, your Honor, I gather
22 adheres to the ruling he made earlier.

23 THE COURT: Yes.

24 MR. GOULD: With regard to the substantive
25 counts 2 through 10. I suggest the proof of mailing in

1 this case is not sufficient to sustain these substantive
2 counts. What do we have here? Testimony is elicited
3 from government witnesses which at best shows that Stoller
4 and /or Allen told brokers that Training With the Pros is
5 an up and coming stock, has a great future but it is
6 highly speculative. The only evidence about the thing is
7 that Stoller, and I think Allen, did indeed speak to a
8 few brokers and that those brokers took it on themselves
9 to make and independent research of the company and then
10 made recommendations to some of their customers.
11

12 Any purchase or indeed any sale of the shares
13 of Training With the Pros negotiated in the normal day
14 to day relationship between the brokers and their customers,
15 if indeed there was intimation they did do anything.
16 I can't find in this case any evidence of a single false
17 statement or misrepresentation by Stoller, by Allen or by
18 Frank at the time that any confirmations were mailed, or
19 in connection with the confirmations. Nothing has been
20 demonstrated to be false.

21 THE COURT: The government's position is very
22 simply that they failed to disclose a simple set of facts,
23 namely that they had pushed this up through the arrangement
24 that they made to purchase and repurchase and then have the
25 Bank Hofmann ostensibly repurchase and then sell to Bonavia,

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2 Weissinger, et cetera, et cetera and the testimony of the
3 brokers who came in here and said that they relied on these
4 men because they had gone well with them in other deals.

5 MR.GOULD: Your Honor, when Mr. Sorkin responded
6 to something that Mr. Feldshuh said a few moments ago you
7 said something very significant.

8 What it was they concealed was that they were
9 underwriters within the meaning of Section 5. If that is
10 what they concealed they should have been indicted for that.
11 This is not a Section 5 case. They are not indicted for
12 that. This is allegedly a manipulation case and these counts
13 I am talking about are mail fraud counts. They are
14 counts for using the mails in this fraudulent practice.

15 Nobody contemplated the use of the mails here,
16 there is nothing to suggest that there are any false
17 statements --

18 THE COURT: The government's theory is the
19 ultimate step in the scheme was to have Weissinger and
20 Bonavia bailed out by sales.

21 MR. GOULD: And there is not one word of proof
22 here that they were bailed out by sales, nor do any
23 of the mail fraud counts relate to transactions in which
24 stock owned by Bonavia and Weissinger was sent through the
25 mails. That is not the stock they are talking about.

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2 The stock in these counts is the Wein stock, the Baruch
3 stock. There isn't enough proof here to support the use
4 of the mails on that.

5 If they had a witness in here who said, I bought
6 a thousand shares of stock on such and such a date and then
7 a demonstration and indeed it was stock that came out
8 of the Weissinger and Bonovia accounts, that would be a
9 different things. But, we haven't got them. There isn't
10 anybody like that. As far as Mrs. Wein is concerned or
11 Mr. Baruch, those are conversations which don't support
12 mail fraud.

13 MR. SORKIN: May I respond to that argument,
14 your Honor?

15 THE COURT: In due course, yes. What else?

16 MR. GOULD: I would like to renew the motions with
17 respect to those two surviving false statements. On 14
18 I suggest there is a complete failure of proof with
19 respect to the allegation. It comes down to do you have
20 any nominees who own any stock at this time. Nothing has
21 been proved on that. Then he gets the equivocal answer,
22 friend and nominees are two different things. "I have no
23 financial interest in the shares of Training With the
24 Pros" and he says "I don't know if anybody else has."
25 Where is the proof in this case that he does?

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2 If your Honor takes it question by question, there
3 is not a single false answer there. Just a lot of loose
4 talk.

5 THE COURT: What about Count 16?

6 MR. GOULD: Here I must confess. I am
7 completely mystified as to what is supposed to be false.
8 "Do you know if Allen owns any stock with Training With
9 the Pros?"

10 "I don't know."

11 "Do you know if D'Onofrio owns or owned at any
12 time," and he doesn't say yes or no.

13 "I have no knowledge, I am using the word
14 'knowledge' in its absolute sense." Bear in mind that
15 the question that is put to him is a double one.

16 "Do you know if he owns or owned at any time" and he
17 doesn't say yes or no. He says "I have no knowledge."

18 Therest of it, I suggest, is completely immaterial
19 to the answers. It is a little monograph by Stoller.
20 on whastthe word "knowledge" means. But, you can't
21 I suggest, convict a man for perjury, and the only question
22 here "Do you know if Mr.D'Onofrio owns or owned at any
23 time" and the answer is "I have no knowledge, I am using
24 the word knowledge in its absolute sense."

25 We don't know if that is related to the first

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2 part whether he owns, or the second part whether he owned
3 at any time.

4 Now, if they wanted to get the kind of answer
5 in a proceeding where you can indict a guy and convict
6 him for perjury they should have asked two questions: Do
7 you know whether he owns any now, and do you know if he
8 owned it at any time, but this answer does not support
9 perjury on both of those.

10 Then again, D'Onofrio, according to his own
11 testimony, used nominees. D'Onofrio said that he showed
12 Stoller documents showing the stock was owned by Bundy,
13 Howe, Strauch. That is the testimony in the case.
14 I don't see how anybody can be convicted for perjury for
15 giving that answer to that loose question.

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2 THE COURT: Mr. Sorkin, I would like you to
3 respond to the first part of Mr. Gould's argument, having
4 to do with all the counts except the false statements counts.

5 MR. SORKIN: Your Honor, Number 1, Counts 2
6 through to 10. Count 2 charges a scheme to defraud. Section
7 770A, talks about engaging in action practices, artifice to
8 defraud and scheme to defraud. This entire case has been a
9 scheme to defraud. These nominees never owned the stock
10 The stock was owned by Messrs. D'Onofrio, Stoller and Allen
11 right from the beginning.

12 They were merely indicating for them. That was not
13 disclosed in the offering circular, that these men were taking
14 down one-third of the entire float.

15 Point Number 2, Mr. Gould talks about no proof
16 that there were any misrepresentations on Counts 3 through 6
17 or omission. There were enormous omissions. The omission
18 that Number 1 by touting the stock to the Elinors, Hyman
19 and Baruch and Wein, they would be raising the price of the
20 stock to allow Bonavia and Weissinger to get out. That
21 was the whole purpose of rescuing them. It was a two-step
22 process, which was laid out by Stoller on the airplane when
23 he tells, "You blow it off at one level and we get out at
24 another level."

25 Clearly there is a scheme here and this entire

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2 scheme was never told to those three brokers in April and
3 May of 1969.

4 I think that should cover all of Counts 2 through 10
5 there was an enormous scheme and never disclosed and the
6 entire purpose of telling them to buy the stock was not
7 so it would be a cross, the exact stock that Bonavia and
8 Weissinger are selling would go right to the customer.

9 That would be a miracle if you can show the
10 exact transfer. It is the purpose of moving the stock out
11 so Bonavia and Weissinger can get out at a price higher
12 than they paid.

13 MR. GOULD: Your Honor, first of all, Bonavia
14 testified to my amazement that he never sold the stock.
15 That is his testimony. He never had it and never sold it.
16 That he was just used. The other thing that disturbs me
17 about Mr. Sorkin's argument on this, is, if we had evidence
18 in this case -- let's take D'Onofrio at face value for the
19 purpose of this argument.

20 He said I entered into the scheme with Stoller
21 to run it up. And then you find conversations with brokers
22 between February 4 or 5th, the date when the registration
23 statement becomes effective and the time when Elinor Wein
24 and Baruch and Hyman make the only purchases or their people
25

1 hpb-3

2 make the only purchases we are concerned with, then we
3 would have proof of a scheme, a manipulation.

4 The fact is that the only proof that the Govern-
5 ment has adduced with respect to these sales and these
6 counts, is when this stock is already 60. There is no proof
7 they ran it up. Indeed, one of the Government's witnesses
8 came out spontaneously with the proposition that it was
9 the brokers who traded it up.

10 Not brokers connected in any way with these defend-
11 ants. Other people. So that we find this peculiar situation,
12 and I must say it is unique in my own experience with these
13 so-called mail fraud manipulation cases. The stock comes
14 out at \$7. No proof of any act by any defendant and then
15 we pick up the tale when the stock is \$60 and then it is
16 said the transactions were fraudulent.

17 MR. SORKIN: Mr. Gould keeps arguing manipulation,
18 your Honor. Mr. D'Onofrio said he would speak to two
19 market makers. Mr. Schneiderman was spoken to by Mr.
20 Stoller. The fact the stock goes up, your Honor no one is
21 charging a manipulation. What the Government is charging
22 is when they touted the stock to these brokers in April
23 they never disclosed the purpose of the touts to get Bonavia
24 and Weissinger out, that there was a scheme.

25 Putting the stock in a bank in Switzerland,

hpb-4

blowing it off, using nominees in the first instance. Mr. Gould goes back to manipulations, wash sales and so forth.

There isn't anything in here on a classic manipulation of wash sales. That is not the fraud. There were enormous omissions to material facts to all three brokers. There was a scheme here, a practice to defraud the brokers and their customers.

That is the substance of the case. It goes right back to Count No. 2, your Honor, and Count Number 2, these people were entering into a scheme to defraud, clearly, because they failed to disclose the scheme they were participating in, in the circular.

We don't argue that it is a Section 5. Section 5 would be if they didn't register the stock. Here they went by the exception, the Reg. A exception, but the circular was fraudulent. If that is fraudulent that is a violation of 7QA.

MR. GOULD: I will accept everything Mr. Sorkin says on this and I just want to say one more word about it. First of all, the reference to the brokers that D'Onofrio made, I will talk to some brokers, that is not in this case. There is no proof he did talk to any broker or that there were any brokers other than the ones who came in the room.

We have to take it on proof and not on that.

1 hpb-5

2 Now, here is a thing that bothers me about this.
3 We are asked to believe on the facts here, in order to
4 sustain the validity of Counts 2 to 10, eight counts, we
5 are asked to believe that during the early stages of the
6 conspiracy it was contemplated, it was within the ken of
7 these people for criminal purposes, that some time in April
8 there would be conversations with brokers and brokers would
9 mail confirmations.

10 Now, that is exactly what we are being asked to
11 believe here, in order to sustain these counts. And I
12 don't think it is credible. I don't think it can stand.

13 THE COURT: I don't follow you. You seem to
14 be saying it is not credible that they would mail the con-
15 firmations?

16 You don't mean that.

17 MR. GOULD: I think the rule, your Honor, is that
18 in order for the defendants to be convicted on a mail fraud
19 count like this, the use of the mails must be somewhere in
20 their consciousness.

21 THE COURT: I agree.

22 MR. GOULD: What the Government argues here is,
23 that back in the fall of 1968 these fellows cooked up a
24 scheme, and that at that time they contemplated that later
25 on, not with respect to the original issuance of the stock,

hpb-6

1 later on with respect to the stock that Wein and Baruch sold
2 out, there would be sales and confirmations.
3

4 That is the only thing here to the original
5 scheme.

6 MR. SORKIN: I direct your Honor's attention
7 to what Mr. Gould has evidently left out, that there was
8 a meeting at the Baur au Lac, how were we going to rescue
9 them. Well, by talking to the Elinors, how else could
10 you do that than by talking to the Elinors. That was contem-
11 plated. There is a conversation, where they say we got
12 to save them for the next deal. That was contemplated a year
13 before this occurred.

14 THE COURT: All right.

15 Motions denied.

16 MR. FELDSHUH: May I for the record adopt the
17 motions of Mr. Gould?

18 THE COURT: Yes, you certainly may. Same ruling.

19 MR. GOULD: How about 14 and 16. Does your
20 Honor deny those?

21 THE COURT: Yes. Now, Mr. Feldshuh, let me rule
22 on your request to charge.

23 Well, I will tell you what we are going to do.
24 Intead of doing that, I am going to call the jury in and
25 Mr. Gould, now would be the time for you -- do you know what

1 hpb-7

2 the bail -- it is true I fixed the bail, but I haven't got
3 that total recall without searching the record.

4 MR. GOULD: I will get it, your Honor. I am
5 told there is a \$100,000 personal recognizance secured by
6 a \$10,000 surety bond.

7 MR. SORKIN: We concede that.

8 THE COURT: All right. You asked me to take
9 judicial notice --

10 MR. GOULD: I will do that when the jury comes
11 in.

12 THE COURT: Then I will excuse the jury for luncheon
13 and I will rule on the requests as best I can. They are as
14 thick as the Manhattan telephone book and they cross referecne
15 each other, that is, they duplicate. Not only that, they
16 are replete with boilerplate, so that this means two things:
17 One, there is a lot to go through but still and all once
18 we cam get to it, I think I can rule pretty quickly.

19 MR. GOULD: Your Honor knows we recognize there
20 is boilerplate --

21 THE COURT: I am not criticizing you.

22 MR. GOULD: You can see the boilerplate right
23 off the bat and if we don't include it, then your brethren
24 in the Circuit Courts would clobber us --

25 THE COURT: I am not condemning you. I am just

1 bpb-8

2 making a point that despite the bulk, I think I can read
3 quickly. I think I can rule.

4 Let's get the jury back so we can get them out.

5 MR. GOULD: Then I will just ask you to take
6 judicial notice.

7 THE COURT: Fine.

8 MR. SORKIN: Your Honor, we prepared a supple-
9 mental request this morning. It is one page long. We have
10 not had a chance to type it or give copies, but we will hand
11 it up now and have your Honor look at it.

12 THE COURT: I think you can show it to defense
13 counsel.

14 MR. GOULD: What are we asked to do, your Honor?

15 THE COURT: At a suitable time you can do as you
16 see fit, but I just want you to see it. He doesn't have
17 any other copies.

18 MR. GOULD: Can he make a copy for us?

19 MR. SORKIN: I am going to.

20 End 6B.

qb-1

Tk 7A

(In open court; jury present.)

THE COURT: Ladies and gentlemen, I am sorry for the delay but we had to spend all of this time covering some matters which unexpectedly came up at the end of the trial here.

Now, Mr. Sorkin, the jury I don't believe, knows that the Government has rested.

MR. SORKIN: That is correct, we rest.

MR. GOULD: The defendant Stoller rests.

MR. FELDSHUH: The defendant Frank rests, your Honor.

MR. GOULD: Before we rest I want to get this one point in.

I ask your Honor to take judicial notice, on the basis of the records of the case, that Mr. Stoller's present bail is that there is a recognizance bond for \$100,000 which is secured by a \$10,000 surety bond.

THE COURT: The Court so takes judicial notice of those facts.

MR. GOULD: Thank you.

THE COURT: With that I take it that the defendant Stoller also rests?

MR. GOULD: Yes, your Honor, we also rest.

THE COURT: Ladies and gentlemen of the jury, this

1 qb-2

2 even having occurred in open court it will be necessary
3 for the lawyers and I to take up some other matters under
4 the law at this point.

5 Rather than hold you up I am going to ask you
6 to go to lunch. It is ten to 12:00. I am going to ask you
7 to come back at a quarter past 1:00, if you would, at which
8 point we will start hearing closing arguments from counsel.

9 The order will be the traditional way. We will
10 hear from Mr. Feldshuh on behalf of the defendant Frank, and
11 Mr. Gould on behalf of the defendant Stoller, and lastly
12 Mr. Sorkin on behalf of the prosecution.

13 We will excuse you now and please be back at
14 1:15.

15 (Jury left the courtroom.)

16 THE COURT: Let me pass on the Government's requests
17 first.

18 First of all, is there any objection that any
19 defense counsel has to anything in the Government's requests?

20 MR. GOULD: Your Honor, with respect to Request
21 No. 3, there are two pages to that one and we object to the
22 third paragraph on Page 2 of Request No. 3 --

23 THE COURT: I couldn't hear you. You object
24 to what?

25 MR. GOULD: The third paragraph on the second

1 qb-3

2 page of Request No. 3, the one which starts with the word
3 "It is not necessary for the Government to resolve as to
4 guilt of the defendant to a positive certainty or beyond
5 all possible doubt," and so on, the rest of it. I don't
6 think that that paragraph is justified --

7 THE COURT: I don't charge in haec verba any
8 of this material. However, I am going to charge this
9 point so exception to you.

10 MR. FELDSHUH: I take it we automatically will
11 have the same exception as far as the defendant Frank?

12 THE COURT: Yes, very good.

13 MR. GOULD: With respect to Request No. 5, we
14 object to that one.

15 THE COURT: Mr. Feldshuh has submitted one
16 very similar.

17 I am sorry, I am looking at No. 6.

18 If the same comment is true Mr. Feldshuh has
19 submitted one very much like this. I am going to overrule
20 your objection. However, I would point out that I am not
21 going to read anywhere near all this detail. Perhaps you
22 may find that you like my edited version better, I don't
23 know.

24 Exception to you. I am going to charge in sub-
25 stance No. 5.

1 qb-4

2 MR. FELDSHUH: With regard to these requests,
3 may I respectfully request that Mr. Derfner fill in on
4 those points?

5 THE COURT: Surely.

6 MR. DERFNER: If I may speak to Request No. 5
7 of the Government. I don't believe in any of our requests
8 we asked the Court to instruct the jury as to the indictment
9 being within the province of the grand jury. Ours was
10 merely that the indictment was an accusatory instrument only
11 and entitled to no evidentiary value.

12 THE COURT: I must admit I am not going to talk
13 about that. I don't know what that has to do with it.

14 Wait a minute, I have been misreading all along.
15 I have been reading Request No. 6. I am not going to charge
16 No. 5.

17 MR. SORKIN: Of the Government, your Honor?

18 THE COURT: Yes. I just see no reason to get
19 into that. I will not charge No. 5.

20 I beg your pardon. I have been talking all along
21 about No. 6 in substance.

22 Is there anything else you object to?

23 MR. GOULD: No. 6, your Honor, I really think
24 this is -- how can I say it? There isn't any issue here
25 as to registration or as to disclosure in the course of the

1 qb-5

2 public offering. This is just going to create confusion
3 here.

4 THE COURT: Again, I am going to charge something
5 like 6. It is not going to be in haec verba. There was not
6 a classic full registration, we know all that. But the gener-
7 al purpose of the statute I am going to charge.

8 MR. GOULD: There is no charge under Section 5 of
9 the indictment, your Honor.

10 THE COURT: I didn't say there was.

11 MR. GOULD: Look at the language of this.

12 THE COURT: I said specifically that I would
13 not use the language. But in general I am going to talk about
14 the purpose of the statute. Regulation A, and I assume
15 this is what it is all about, I will talk about that.

16 In other words, I am going to charge that portion
17 beginning on Page 4 pretty much.

18 MR. GOULD: Is your Honor going to charge
19 specifically what concerns me is on Page 5 of Request No. 6,
20 there is no proof in this case as to how many people bought
21 the stock or how many people have to buy the stock in order
22 for it to be a public offering. In other words, I disagree
23 completely with the proposition which is stated at the end of
24 that first paragraph on Page 5, "If the stock is being sold
25 to a few people who will control a large percent of the offerin

1 qb-6

2 this must be disclosed."

3 That is a matter within the discretion of the
4 Securities and Exchange Commission.

5 THE COURT: Again, gentlemen, you are asking the
6 impossible from me. These charge requests are of utmost
7 ponderosity. They are lengthy, they are chock-a-block
8 with language. I quite agree with you, however, that the
9 page you call my attention to, you will not hear me utter that
10 sentence which I think is misleading here on its face.

11 MR. GOULD: Thank you, your Honor.

12 On Page 6 of that Request No. 6 --

13 MR. SORKIN: Excuse me. May I comment on tha .
14 When Appleton was on the stand, she was our first witness
15 and we attempted to elicit from her what an underwriter was
16 and what a public distribution was --

17 THE COURT: I know, but that sentence doesn't
18 say anything to me even from your point of view. I am not
19 going to say it. I am telling you right now.

20 What next, Mr. Gould?

21 MR. GOULD: Page 6. Would your Honor look at
22 the language that they have used here, "any manipulation or
23 deceptive practice, whether it be the providing of false or
24 misleading information in the offering circular," and so on.

1 qb-7

2 That whole paragraph doesn't belong in the charge.

3 "It destroys the faith of the American investor"

4 THE COURT: I am excluding that. I agree with
5 you.

6 What is next?

7 Mr. Sorkin, while we are waiting, you might be
8 considering Request to charge No. 17 of Mr. Feldshuh and Mr.
9 Derfner on behalf of Frank. Wait a minute, I have that wrong.
10 I beg your pardon, not that one.

11 Request Number 3 dealing with the statute of
12 limitations or time.

13 All right, Mr. Gould, what is next?

14 MR. GOULD: Request 11A, your Honor, I find that

15 MR. SORKIN: Your Honor, it is not 3. I can't
16 find it.

17 THE COURT: 23.

18 MR. SORKIN: I am sorry.

19 MR. GOULD: Would your Honor look at Government
20 Request No. 11A.

21 THE COURT: I don't think that is accurate.

22 MR. GOULD: I don't either. I assume your Honor
23 will charge with respect to the facts concerning the
24 indictment and not in the language suggested?

25 THE COURT: Yes. I must say, Mr. Sorkin, 11A

1 qb-8

2 doesn't make any sense to me.

3 MR. SORKIN: You are absolutely correct. I
4 think when this was prepared we anticipated that the obstruc-
5 tion indictment would be in.

6 THE COURT: I am not going to charge 11A.

7 MR. SORKIN: Yes, sir.

8 THE COURT: What is next?

9 MR. GOULD: Request No. 14, the sentence at the
10 end of the third paragraph, "In the vernacular he must be in
11 on the sceme, in on the plan." I don't think that is
12 going to help anybody.

13 THE COURT: I am excluding that. Never fear,
14 I would never say that. That is not my habit.

15 MR. GOULD: Generally with respect to Request
16 No. 14, I think that your Honor will agree that participation
17 by any defendant is determined by his own acts and statements
18 and not by acts of others and I ask you to charge that way.

19 THE COURT: Right. I will do that.

20 MR. GOULD: If your Honor please, Request No. 20,
21 the first paragraph there says that the indictment shows
22 the existence of a single integrated scheme to defraud brokers.
23 I suggest that there isn't anything like that in this case
24 at all. And that that should not be charged in any way.
25

1 qb-9

2 MR. SORKIN: Elinor Wein was a broker who put her own
3 money into the stock.

4 MR. GOULD: But there is no proof that that
5 was part of the scheme or that she was in fact defrauded.

6 THE COURT: I will charge that. You have a
7 good factual argument but in substance I will charge that.
8 However, take a look before 20 at No. 17.

9 MR. GOULD: EXcuse me, your Honor?

10 THE COURT: No. 17. In recent years I have come
11 around to the view that this, though it is good law in sub-
12 stance, is more confusing than helpful and I just wanted
13 to warn you, Mr. Sorkin, that in the last three or four years
14 I have not given this bizantine charge to a jury because of
15 certain things that I observed happens when a Judge gives that.
16 It is good law, but it is very misleading though.

17 From a prosecutor's point of view I have always
18 been mystified as to why they want it.

19 MR. SORKIN: I think clearly, your Honor, the
20 reason we want this is conversations had at the Bau au Lac
21 outside of Mr. Frank's presence are attributable to him once
22 he joins the conspiracy, conversations outside Mr. Stoller's
23 presence --

24 THE COURT: Yes, I know, and I will give it in
25

1 qb-10

2 substance, but it will not come out this way.

3 Literally this is an accurate reproduction
4 of what many Judges do, but I do it in a much briefer
5 fashion.

6 I am just warning you that if you wait for all
7 this windy business you won't hear it. But the principle
8 I will give, you are quite right.

9 I just want you to know it won't come out that
10 way.

11 MR. GOULD: Going back to this request No. 20
12 where they say it was an integrated scheme to defraud brokers,
13 if your Honor looks at the indictment, Paragraph U, it says
14 there very clearly, "As a result of the above-mentioned
15 activities of the defendants, the investing public suffered
16 substantial monetary loss." I don't think it is a great
17 point but I don't think there is anything like that in the
18 case.

End 7A

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2 THE COURT: I am sorry but in substance that
3 will come out.

4 What is next?

5 MR. GOULD On that same one, No. 20--

6 THE COURT: At this rate we better ask the
7 jury not to come back at a quarter past one. I guess they
8 have gone though.

9 I guess they will just have to wait.

10 We are still on 20?

11 MR. GOULD: On No. 20 -- and I am sorry to be
12 nitpicking -- at the bottom of the page he writes
13 "Although it is necessary that you find" and I think what he
14 really means is that it is the government's burden to
15 prove --

16 THE COURT: Again, Mr. Gould, I don't know how to
17 answer this kind of thing except to say that I don't
18 use lawyer's language when I charge a jury. I don't want
19 to nitpick and I don't blame you. You have to worry about
20 these things but I am not going to charge that language.

21 MR. GOULD: As I make these points I know
22 there are some things I am making that your Honor is not
23 going to charge. Nevertheless, I know of no escape from
24 doing what I am doing. I don't want to keep apologizing.

25 THE COURT: I am not going to say those words and

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2 therefore, I think I would agree with you.

3 MR. GOULD: This ame one on 20 where they
4 have a separate section called single conspiracy, I don't
5 think your Honor can charge that as a Horne Book matter.

6 THE COURT: WE are not dealing with 20.

7 MR. GOULD: We are dealing with 20 and there
8 is another section. It is broken up.

9 MR. SORKIN: It is a continuation.

10 MR. GOULD: Page 2, excuse me.

11 If there are two or more conspiracies here then
12 you have got themuch maligned Kotteakos situation and
13 I don't think they mean what they say here.

14 There must be a single conspiracy.

15 THE COURT: As charged substantially in the
16 indictment.

17 MR. GOULD: That is right.

18 THE COURT: I am going to charge them that.
19 I have to be so stoic about this but I have never learned
20 in all my years as a judge how to cope with this because
21 I don't charge in the language given to me by the prosecutor
22 and I don't buy this language. It is confusing.

23 MR. GOULD: This is boiler plate.

24 THE COURT: I know.

25 MR. GOULD: But I have to callit to your Honor's

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2 attention.

3 THE COURT: I agree with you. I am not going
4 to charge this.

5 MR.GOULD: Now with respect to 21, the para-
6 graph after the description of the section that it is unlaw-
7 ful and so n, I assume that your Honor is going to charge
8 in language which has a somewhat closer fidelity to the
9 Securities Act then this paraphrase. In other words,
10 I object to what it says here.

11 THE COURT:I am not so sure as I follow that.
12 "In furtherance of any fraudulent scheme," and that
13 is what the statute is all about.

14 MR. GOULD: I agree that is what the statute
15 is about but I don't think that is a good paraphrase
16 of what the statute is about.

17 THE COURT: It seems to me we come down to
18 a quibble about semantics. I don't know what to say to
19 you, Mr. Gould. "In furtherance of a fraudulent scheme",
20 the statute talks about that.

21 MR. GOULD: I am sure your Honor is going
22 to tell them what the statute says and not that thumbnail
23 sketch of it.

24 MR.SORKIN: I am not going to quibble either.
25 We obviously don't know the exact words your Honor will use

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2 but I think this is in substance what the statute says.

3 THE COURT: I think it is too so I think I
4 better give the defendants an exception on No. 21 although I
5 will not use that exact language.

6 MR. GOULD: 22-A, I think that creates more
7 problems than it solves. "That they must consider whether
8 it was material to inform the investing public that these
9 men should have been listed as underwriters." We are
10 coming back to what I keep insisting is the Section 5 charge
11 here. The only way they could be underwriters here is if there
12 was a violation of Section 5 --

13 MR. SORKIN: If you violate Section 5, your Honor,
14 you commit a fraud in the offer and sale of stock.
15 You don't have to charge both. If you engage in an act
16 or practice or omit to state a material fact you violate
17 17-A whether Section 5 is charged or not. It is the
18 offer and sale of stock period. It can be fraud in a
19 private offering exemption. It can be fraud in an intrastate
20 offering exemption and it is a fraud in a Reg. A offering
21 exemption. That is the essence of 17-A. It doesn't
22 matter whether it is a 5 or not.

23 MR. GOULD: I agree with what he says except
24 it has nothing to do with my point. I suggest that
25 there is no way in which we can make a jury, if this

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2 charge were given, understand that they must consider whether
3 it was material that these men should have been listed
4 as underwriters. I don't think it can be done.

5 THE COURT: I don't understand your point.

6 MR. GOULD: I don't think that it is incumbent
7 on this jury to consider whether it was material to inform
8 the investing public that these men should have been listed
9 as underwriters in connection with the offering circular.
10 I don't think that is what our case is about.

11 THE COURT: You are not suggesting that I
12 should instruct the jury that it is material?

13 MR. GOULD: No, sir. I am suggesting that your
14 Honor should not give a specific charge on the problem of
15 listing them as underwriters in the Regulation A offering.

16 MR. SORKIN: It seems to me the Court has to
17 charge what a material fact is and in charging what a
18 material fact it becomes a factual question on the
19 jury's part as to what is material to the investing public.

20 If Mr. Gould wants to make the argument to the
21 jury that it was not material and it shouldn't have been
22 disclosed in the offering circular he is entitled to do
23 that. I think your Honor has to instruct the jury that the
24 jury is entitled to find that it would be material to the
25 investing public, yes or no, that 33 per cent of the float

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2 is being taken down by these three individuals.

3 MR. GOULD: But there isn't any proof that
4 33 per cent of the float on a Reg.A in '69 was a violation
5 or that the SEC regarded it as a violation. There isn't
6 anything like that in this case. I can show you plenty of
7 cases where 33 per cent of^x the float was in the hands of a
8 few people.

9 THE COURT: But there is nothing wrong with that
10 but it usually has to be disclosed.

11 MR.GOULD: Not necessarily, your Honor.

12 MR. SORKIN: I can't understand Mr. Gould's
13 argument now becuae that is the very issue we wanted to get
14 into right from the beginning and your Honor said it was a
15 question of law that your Honor would charge what an
16 underwriting is, what a material fact is, and --

17 THE COURT: I don't know what you are talking
18 about, Mr. Sorkin. Whatever I said at the beginning of
19 the case has nothing to do with this specific point. We
20 are dealing with a request to charge.

21 MR.SORKING: I understand that, your Honor.
22 It seems to me that the Court now has to take the burden of
23 charging the jury as to what an underwriter is, what a
24 material fact is and let them decide --

25 THE COURT: I didn't say otherwise.

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2 MR. SORKIN: That is the essence of that
3 request.

4 MR. GOULD: I think what your Honor must do with
5 all with respect to consider 22-A and 22-B.

6 You see, in 22-B they beef it up and 22-B we have
7 more problems than we had with 22-A. I am not suggesting
8 that your Honor shouldn't explain what a registration
9 statement is, what a Regulation A exemption is, even what an
10 underwriter is. But I am suggesting to your Honor that the
11 heart of it is contained on page 2 of 22-B.

12 It is the government's contention that the three
13 controlled the distribution of approximately 30 per cent of the
14 Training With the Pros stock. But they didn't prove that
15 that control of 30 per cent is a violation or even could be
16 a violation or what impact it had on the market price.
17 I must tell your Honor that I anticipated from the beginning
18 that we were going to get from the government an expert
19 who was going to point out that the 14,900 shares out of
20 42,000 would have a stated impact on the market price of
21 the stock. I thought that is what the case was going
22 to be about. We never got anybody like that. There is
23 not a word in the record.

24 THE COURT: I consider this another argument to
25 dismiss the count. I would agree with you that the way

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2 22-A is written is a little bit misleading particularly
3 in its juxtaposition with 22-B but in substance I am going
4 to charge requests No. 22-A and 22-B, exception to the
5 defense. Let us move along. It is already a quarter
6 past twelve and we have a whale of a lot of work to do
7 before we even get to the government's and I have to rule
8 on at least the defendant Frank's before we get back with
9 the jury.

10 MR. GOULD: Request No. 34, your Honor, that
11 has to be modified because it is inaccurate, I think.
12 They refer to Counts 11 through 16.

13 MR. SORKIN: Your Honor, he is absolutely
14 correct. That is an error in the body.

15 THE COURT: Which one?

16 MR. SORKIN: 34.

17 THE COURT: Yes, 34 is egregiously in error.
18 We won't argue about that.

19 MR. SORKIN: He is absolutely correct, your
20 Honor.

21 THE COURT: All right.

22 MR. GOULD: Request No. 37, that is out.

23 MR. SORKIN: That is true, your Honor.
24 We concede that.

25 THE COURT: Surely, all the obstruction material is

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2 out.

3 MR. GOULD: And 38.

4 THE COURT: These were obviously prepared
5 before --

6 MR. GOULD: 38 is out.

7 THE COURT: Right.

8 MR. GOULD: Would your Honor look at No. 49.

9 THE COURT: Yes.

10 MR. GOULD: I don't think that is the law.
11 I think that the failure to call a witness by the govern-
12 ment does create an inference.

13 THE COURT: I am certainly not going to
14 charge No. 49 as stated because the first part I think is
15 in error. I think you can draw the inference but you don't
16 have to. You can --

17 MR. GOULD: But you can and this is not the
18 law.

19 MR. SORKIN: Are we entitled to argue that
20 as to the defendants as well?

21 THE COURT: Yes, you can but it is a
22 dangerous argument for you to get into because the
23 defendants don't have any burden of proof. So you have
24 to be sure that you handle it correctly. But the way No. 49
25 is stated it is inaccurate under present existing law

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2 in this circuit as I understand it so I will not charge that
3 as such.

8a am 4 MR. GOULD: I think that's it. Let me
5 just check once more.

6 Excuse me, your Honor, take a look at 47. I think
7 they don't mean that. I think that would have been appli-
8 cable only if one of the defendants had testified.

9 MR. SORKIN: It is requested only if the
10 defendant testified.

11 MR. GOULD: Then it should be withdrawn.

12 THE COURT: It should be withdrawn. Take
13 a look at No. 50.

14 MR. GOULD: What can I say about that?

15 THE COURT: I don't recall any statements --

16 MR. SORKIN: Your Honor, before his 1969 testimony,
17 there were numerous meetings with Mr. Stoller where Mr.
18 Stoller told him my life is at stake, I am putting your life
19 at stake. He had meetings where Mr. Stoller told him you
20 are not going to leave New York alive if you mention me
21 or Mr. Allen in the grand jury. It is clear he testified
22 to that. Additionally in 1972 when he met Mr. Stoller in
23 the Biltmore Hotel Stoller told him, according to
24 Bonavia's testimony, there has been too much trouble with
25 Training With the Pros and if we don't get you, we will get

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2 your son. That is why I think your Honor let in testimony
3 with respect to the son, the franchise when he --

4 THE COURT: What is confusing me here is
5 Jerome Allen. Allen takes quite a different view now.

6 MR. SORKIN: Obviously we have to withdraw any
7 reference to Allen, your Honor.

8 MR. GOULD: It is my recollection the
9 alleged influences had nothing to do with Training With
10 the Pros, on Bonavia.

11 THE COURT: I don't agree with that. As redacted
12 and changed I will charge No. 50 --

13 MR. GOULD: In other words, with respect to
14 defendants efforts to influence and impede Bonavia.

15 THE COURT: Yes.

16 MR. SORKIN: I take it then by your Honor's
17 ruling, and this is a bit of housekeeping too, that
18 the Stoller tapes cannot be used, that they --

19 THE COURT: Stoller tapes?

20 MR. SORKIN: The two conversations on March
21 6th, where there is a conversation with Mr. Allen. It
22 seems to me, your Honor, if those tapes are part of the
23 case and come in under the government's theory that Mr.
24 Stoller is concerned about Mr. Allen testifving, and there
25 are references in their using Mr. Stoller's own words to

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2 to remaining mute and obstruction of justice, that that
3 should be considered by the jury unless your Honor strikes
4 it under the obstruction counts.

5 THE COURT: I said I would allow that to go
6 in although frankly it seems to me it is more beneficial to
7 Stoller than the government.

8 MR. GOULD: I think either of us can make any
9 reference to it if we want to. It goes to the relationship
10 only of the two men, not to the guilt or innocence that
11 remain in the indictment.

12 THE COURT: Or knowledge or intent you might
13 say loosely.

14 MR. GOULD: Just like the testimony of the
15 witnesses who came in here but were on a different point.

16 THE COURT: What else?

17 MR. DERFNER: The last paragraph on request
18 50 is a reference to statements by Frank to Bonavia.
19 My recollection of the testimony, the evidence is that the
20 only statements, threats to Bonavia and statements by
21 Frank, the statements and threats is misleading. There
22 were no threats by Frank to Bonavia but the statements are
23 unrelated grand jurh appearances and --

24 MR. SORKIN: Absolutely incorrect, your Honor.
25 Mr. Bonavia testified he was put on the telephone by

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2 Mr. Stoller and Mr. Frank said --

3 THE COURT: I am going to leave in in substance
4 what it said about Frank although I quite agree the jury
5 might not be impressed at all because they may not remember
6 it or think much of it if they remembered.

7 THE COURT: What else?

8 MR. GOULD: I don't think I have anything
9 else.

10 MR. SORKIN: Did your Honor charge Pinkerton,
11 request No. 44?

12 THE COURT: Do you really want that? I never
13 understand you fellows. You want to make things so com-
14 plicated --

15 MR. SORKIN: I am merely asking, your Honor.

16 THE COURT: I know you asked for it.

17 MR. SORKIN: And also, request 35, your
18 Honor.

19 THE COURT: That is up to them. They are
20 supposed to tell me. We have wasted a lot of time here
21 and I don't want to go back over this again.

22 MR. GOULD: There is a way to charge
23 Pinkerton. I assume your Honor will do it in accordance
24 with the law and I really don't care about 35.

25 THE COURT: I assumed that. That is why I am

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2 a little puzzled Mr. Sorkin would raise that.

3 MR. SORKIN: Thank you, your Honor.

4 THE COURT: Mr. Feldshuh.

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MR. DERFNER: As to the exception defendant Frank joins in the exceptions.

THE COURT: I have recognized that. You are quite right.

Mr. Feldshuh has raised in 23, the statute of limitations. What do you think of that, Mr. Sorkin?

MR. SORKIN: I think he is entirely incorrect on the law, your Honor. I think the conspiracy, the last overt act in the conspiracy goes beyond February 14, 1969, and I think the law is clear in United States vs. DeSimone, which comes to the top of my head, I can't give you a citation -

THE COURT: Take a look at the last sentence. I think that is a correct statement of the law. "Accordingly to find any defendant guilty of the conspiracy count in Count 1 you must have satisfied beyond a reasonable doubt that an overt act occurred on" --

MR. SORKIN: Your Honor, I don't argue with that.

THE COURT: You didn't put it in your request?

MR. SORKIN: Your Honor, I think it is an oversight. I think it is entirely accurate.

THE COURT: All right, good for you. Now, I am going to charge all of the defendant Frank's requests except No. 26, 27, 28, which are perfectly fair arguments, but you have to make them. I don't think the Judge should. That is

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the reason I am not going to charge them.

In all other respects these seems to me to be --

MR. SORKIN: Your Honor, I would just like to take a very quick look at them.

THE COURT: You may. Mr. Gould, if you don't mind, I would rather, in view of the hour, since you won't be on your feet first, respond to your requests which are later, but if you prefer, we will do it now.

MR. GOULD: I don't see any reason for doing it now. It is all right with me.

THE COURT: You see what I am suggesting. I assume --

MR. GOULD: What is your Honor's plan? To hear summations this afternoon?

THE COURT: As much as we can within reason. I don't want to spend the night here or the jury, listening to summations.

MR. GOULD: I was hoping for a lot of reasons that I could go over until tomorrow morning.

THE COURT: You may well at this rate.

MR. GOULD: It is a little tough to start late in the afternoon.

THE COURT: I would sympathize with that.

I assume nobody would object to that.

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1 MR. FELDSHUH: I certainly will not.

2
3 THE COURT: I think the way we are going,
4 that's it.

5 MR. GOULD: Can we count on that, your Honor?
6 It is a personal matter to me.

7 THE COURT: I think in fairness to everybody,
8 I think it is sensible.

9 MR. GOULD: Mr. Feldshuh is ready to go this
10 afternoon.

11 MR. FELDSHUH: I am.

12 THE COURT: I will do this, Mr. Gould, as long
13 as you don't object. Before we quit today, I will rule on
14 your requests and we will plan that Mr. Feldshuh will
15 close for the defendant Frank and then we will go over to
16 tomorrow morning. How much time roughly tomorrow do you
17 think you will need?

18 Just roughly.

19 MR. GOULD: I am going to try to cut it down.
20 I would say between two and three hours at the most. Closer
21 to two than three, but I just don't want to feel I am rushing.
22 We have a 3000-page record here.

23 THE COURT: How much time will you need?

24 MR. SORKIN: Not having heard Mr. Feldshuh, I
25 think two to two and a half hours is certainly in the

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ball park. Anything beyond that I think is a burden on everybody.

THE COURT: At that rate then I think I won't charge until Wednesday morning. That is an awful lot of oratorio. I have to cover unfortunately much more ground than I would like in terms of time.

MR. SORKIN: Your Honor, you asked the Government at the end of the case or some time ago to point out if we were going to introduce any testimony about the 20 to 30 phone calls that Glen Allen testified to and your Honor took it subject to connection and --

THE COURT: You are losing me. Twenty to 30 phone calls?

MR. SORKIN: Your Honor, this is a bit of house-keeping. Your Honor took testimony from Glen Allen. We asked him how many times Mr. Stoller called and he said 20 to 30. There was an objection by Mr. Gould and you took it subject to connection on the Government's representation that we might call Mr. Allen to further develop this.

Obviously we didn't call Mr. Allen and I think it is appropriate if counsel wants to strike the motion --

THE COURT: That is very fair of you. I see.

MR. GOULD: I don't care.

THE COURT: Do you want it stricken or not?

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MR. GOULD: I move to strike it.

THE COURT: Granted.

MR. SORKIN: When does your Honor intend to instruct the jury as to the resolution of the tape matter?

THE COURT: Resolution of the tape matter?

MR. SORKIN: Mr. Allen's exculpatory testimony as to Mr. Frank. Will that be before Mr. Feldshuh sums up or --

THE COURT: Yes, that is what I intended to do. If I should show signs of forgetting, please jog my attention. You are quite right.

MR. SORKIN: Very well, your Honor. I don't know if we will be able to eat lunch by 1:30 or not. Let's try it by 1:30.

MR. GOULD: Why don't we say quarter of 2:00, your Honor. We have to go quite a good distance to get lunch.

THE COURT: Let's try at 1:30, but I won't expect to blow a whistle if you are not back. I will understand.

(Luncheon recess.)

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AFTERNOON SESSION

1:45 P.M.

(In open court; jury present.)

MR. SORKIN: Your Honor, you asked us to hand up the last request and you also asked us to remind you of certain matters we discussed before the break.

THE COURT: Ladies and gentlemen, I apologize for this delay further. What happened in a nutshell was that we were going much longer than we thought and when we rushed out to get a bite to eat it wasn't so easy to do, presumably because of the holiday.

Before we begin, I want to bring to your attention a couple of matters that the Court ruled upon while you were out of the room. First of all, you may remember that when one of Mr. Allen's sons was here, he was asked and testified something to the effect if he recalled some 30-odd phone conversations or phone calls from Mr. Stoller, and I took that testimony subject to connection, as we sometimes put it.

The Government has agreed that that testimony was not connected up and therefore that answer of his should be stricken and disregarded.

The second thing is that you may recall that during the testimony of Mr. Allen himself on both direct and cross he was asked and gave certain evidence about Mr. Frank,

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2 most particularly, as I recall it, in relation to the
3 allegations that Mr. Frank was to receive \$15,000 for whatever
4 role he played in the Training With the Pros transactions
5 and certain other evidence about Mr. Frank, as Mr. Allen put
6 it, some of which if not all of which tended to exculpate Mr.
7 Frank.

8 For technical reasons I must instruct you that
9 all of those questions and answers having to do with Mr.
10 Frank are stricken and must be disregarded by you entirely.
11 That is the testimony of Allen regarding Frank on both direct
12 and cross is stricken and must be disregarded by you in
13 deciding this case.

14 Now we come to the point where we will hear closing
15 arguments. As I said, first we will hear from Mr. Feldshuh
16 on behalf of the defendant Frank.

17 Mr. Feldshuh.

18 MR.FELDSHUH: May it please the Court, Madam
19 Forelady, Mrs. DeBartola, ladies and gentlemen of the jury:

20 It is now your weighty task to decide whether
21 Martin Frank spends the rest of his life as a convicted felon
22 or as a practicing attorney rebuilding a practice and reputa-
23 tion which has been cruelly devastated by this nightmare. I
24 come before you to sum up the case for Mr. Frank's acquittal.
25 I undertake this without fear, without trepidations, but
hopefully with brevity but in all respects with the fullest
sense of sincerity.

End 1A

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2 As you have no doubt been told, and some of
3 you know, the Court will instruct you in its charge as
4 to the law. But you and you alone are the triers of the
5 facts in this case.

6 Now to the case. Martin Frank is charged
7 by the prosecutor with having committed certain offenses.
8 But has he in reality been so charged by the prosecution?
9 Ot has he been charged by that self-seeking duo, D'Onofrio
10 and Bonavia?

11 Excuse me if I dwell for a moment upon person-
12 alities, but I am sure and you will agree, that a case built
13 upon the hollow and skimpy evidence as we have heard
14 here must have been motivated and in fact was here proven
15 to be motivated by something other than getting to the truth.
16 It is in that sense, Madam Forelady and ladies and gentlemen
17 o the jury, that I ask you to approach the task before
18 you.

19 For more than three weeks you have sat watcyinq
20 the prosecution unfold a tale, a tale by whom? I am sure
21 you will agree it was a tale created, concocted, invented
22 and manufactured by Ramon D'Onofrio, with an assist;
23 of course, out of right field, from Joseph Bonavia. And
24 who is he in the course of the testimony that came before
25 you? He was a self claimed innocent, but later on upon

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his examination he was shown to be a sophisticated,

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avarice and a willing partner to government rewards. You will

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remember his agreement with the government not to be prosecu-

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ted for income tax. No less so was Bonavia than D'Onofrio.

6

He took had his little agreement. Their freedom they were

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buying, and they were buying it, of course, only so long

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as the prosecutor in his unfettered judgment and opinion

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would decide if they are telling stories which fit the

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prosecution's conception of the case.

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But in that regard don't you remember these

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two men, who they were, admitted perjurers, admitted liars?

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Men who were steeped in infamy. For as their characters

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unfolded before you were they not steeped in perjury, in

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lies, in infamy?

16

Now I say to you, most respectfully, that it

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is the malevolent, the bad D'Onofrio and the now self-

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pious Mr. Bonavia who in seeking to escape punishment,

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as was clearly brought out before you, created by twist and

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turn this unholy scenario.

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I am going to stop now with respect to their

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personalities and enough of that is said here and now

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for this moment. I solicit your attention, which I know

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you will give, to review with me the undisputed and logical

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facts as they apply to Mr. Frank, and which facts I respect-

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2 fully submit to you with all consideration and deference
3 impel his acquittal.

4 Now for the facts: As you know there is an
5 indictment and your Honor will later charge you that the
6 indictment is not evidence, it is merely a charge. Just
7 that the prosecution says "I charge you with doing so
8 and so".

9 However, it is important in the consideration of
10 this case to understand the nature of the charge insofar as
11 it applies to Mr. Frank. You recall in my opening statement
12 I said to you that you would have to go pretty far down the road
13 before you found that Mr. Frank was mentioned in any sub-
14 stantial way in this indictment. And that is what it was.
15 The charge is that a group of men some time beginning in June
16 of 1968 got together and concocted a scheme whereby a
17 particular issue of stock, Training With the Pros, would come
18 out and would be sold as a result of their manipulation in
19 which they would create a false market and endeavor in the
20 course of that to "blow off", and you remember those words,
21 to saddle, in other words, into the acts of Bonavia and
22 Mr. Weissinger the stock at a highly inflated price.

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2 However, when you look at the indictment, there
3 is no mention that Mr. Frank ever participated in this
4 June 1968 meeting, if there was such a meeting. Then,
5 as you go down further, you find that for the first time,
6 where Mr. Frank apparently appears, is that there is an
7 alleged mis-September meeting. Now, who created these meet-
8 ints?

9 Do you see any records or writing about this
10 meeting? There is only talk, and the talk is out of
11 the mouth of D'Onofrio which, later on in my summation, I
12 will point out to you how that talk is so vitally contra-
13 dicting.

14 Now, it is said in this indictment that in
15 September of 1968 Mr. Frank is told about this situation.
16 But, at that point in time he is not charged with joining
17 any conspiracy. Not at all.

18 So, you have June, July, August, September,
19 October and then for the first time comes November of 1968,
20 where he is then charged that there was a meeting in his
21 office, at which point there was brought into evidence a let-
22 ter of indication from Bank Hofmann, that famous,
23 repeated October 18, 1968 letter. And, it is asserted at
24 that time that Mr. Frank now, having heard about this letter,
25 indicates that this letter is a mistake, it should never

1 have been sent and therefore as far as this conspiracy which
2 is allegedly related to him, it is best that the instructions
3 in that letter, mainly Bank Hofmann seeing to purchase
4 some 30,000 shares, Government's Exhibit 4 in evidence, that
5 with respect to that letter Mr. Frank is claimed to have
6 said "Don't use it, it is no good, it is impossible" et cetera.
7 That is November 1968.
8

9 And then, it is suggested that Mr. Frank at that
10 time said, "The best way to do this job is by nominees,
11 of nominees, so that you can hide the real identity."

12 As a matter of fact, when you read the indict-
13 ment it is an amazing language: "He suggested nominees who
14 by reason of their designation would avoid detection."

15 You no doubt remember in my opening statement
16 I pointed out, I shall do it with a little more particular-
17 ity later on, with respect to this avoiding detection, you
18 remember I said to you, isn't it a wonderful thing that
19 you and I could avoid detection by my naming my wife as
20 nominee, by naming my mother-in-law as my nominee, by
21 naming my son as nominee, my neighbor. This is to avoid
22 detection so that it wouldn't fall upon me.

23 Now I ask you, come to this trial with your
24 own experience in life, and come to the conclusion, is this
25 the way Mr. Frank who claims to be an astute securities

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lawyer, is going to suggest this is the way to avoid detection? That is, of your members of the families of nominees. Mind you, you have a wife who is a housewife and a mother-in-law who does nothing, and she has the ability to buy stock and so on.

When you come to this kind of evidence where it is alleged that Mr. Frank, I ask you, please, bring your experience, does it ring true?

Later on, as I said, I will go through the nominees and bring out who they are.

Now, that is the first instance that we have got Mr. Frank's contact with this situation where it is claimed he became a member of this conspiracy, in the middle of November, 1968, in October with the October 1968 indication letter from Hofmann, that is.

Now, what is an indication letter? It is merely somebody writes in, Please may I buy some of your stock when you're ready to sell. That is an indication letter. They indicate and they say can I buy 200 shares, 400 shares, whatever. That is the sum total what an indication letter is.

Now, with respect to this situation, in November of 1968, the indication letter comes forward as the reason for this meeting. Later on, as you will recall and as

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2 I will explore with you further, the indication letter
3 shows up in the SEC investigation, the due diligence
4 meeting at the end of January 1969; it shows up at
5 MORse's testimony before the SEC on May 27, 1969 and it is
6 reported by this witness, D'Onofrio, that with regard to the
7 indication letter, that in April, mind you, April 1969,
8 Mr. Frank told Stoller, and D'Onofrio, you better destroy
9 the letter. Now, I ask you, if Mr. Frank is so concerned
10 about the destruction of that letter when he first saw it,
11 why wasn't it destroyed in November of 1968? Why didn't
12 he come forward at that time, an astute securities lawyer
13 and why didn't D'Onofrio say at that time that Mr. Frank
14 told him to destroy the letter. But, I will tell you.
15 That letter was never destroyed by Mr. Frank, he never gave
16 the instruction.

17 The fact is, as we will explore this further,
18 you will find specific evidence on this point, conceded by
19 the government, in this sense, that if Miss Marilyn
20 Herzfeld were called to testify, and I will read that
21 stipulation to you, she would testify that she destroyed
22 the letter at the end of 1972, and I assure you that it is
23 specific in this case that the SEC saw that letter in January
24 1969, they saw it again on May 27, 1969.
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2 So, why is Mr. Frank directing the letter be
3 destroyed when in fact everybody has it? The SEC has it,
4 and the government produces a copy, Government's Exhibit
5 4.

6 But let us leave that for a moment and let us
7 go back to the indictment.
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2 With regard to the indictment itself we find that
3 we have not what we call means of a conspiracy. What that
4 means, actually, what the means mean is that somebody has done
5 something to further the conspiracy. Some event has happened
6 whereby the conspiracy is brought down the line.

7 When you look at these counts in the indictment,
8 I wish to point out to you that there are 21 paragraphs
9 as to the means by which this alleged conspiracy is being
10 moved along.

11 And of those 21, Martin Frank is only mentioned
12 in five. That is all, just five. And, I wish to say, with
13 respect to those five, at the end of the Government's case,
14 two of them were dismissed by his HONOR on the basis that
15 there was no proof.

16 So, therefore, out of these 21 alleged meetings,
17 we end up with three, and I will discuss those three with you.

18 Then there is in this indictment, as you will
19 learn, matters which are called overt acts like making a
20 telephone call or mailing a letter, or some fact which accom-
21 plishes the means of a conspiracy. There are 14 of these
22 mentioned, set out in the indictment, and of the 14 Mr.
23 Frank is only mentioned in three. And, at the end of the
24 prosecution's case, one was dismissed, leaving but two for
25 me to discuss with you.

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2 So in review, and to summarize, with regard to
3 the means of this conspiracy, I will talk to you about three,
4 and with regard to the overt acts, I need only to talk to
5 you about two.

6 Now, at this stage I wish to review with you
7 what those three means are and what those two overt acts are,
8 with which and as to which Mr. Frank was accused in this
9 trial.

10 On Page 5 of this indictment -- I will charge that --
11 make that Page 4 of the indictment, and no doubt you may
12 have that indictment taken into the jury room with you, it
13 is stated that Mr. Frank had a coded account in Switzerland.

14 Now, it is plain, and I will say this to you, the
15 mere fact that one has a coded account is not unlawful. It
16 is the use of the coded account which may or may not be law-
17 ful, but there isn't a shred of evidence, not one piece of
18 evidence in this case that Mr. Frank's alleged coded account,
19 so-called secret account was ever used, whether there was
20 a cent in that account or a share of stock. Not one piece
21 of evidence.

22 So, with regard to that, I submit to you, there
23 is no proof as to its use. You and I and any of us if we
24 choose, could go to Switzerland and open up an account. But
25

1 the question is, what is its use? Absent a use that is
2 illegal, that ends that situation, and there is nothing
3 illegal about it.
4

5 Now, the next place where Mr. Frank is mentioned,
6 is in subparagraph (e), where he gives them this great
7 explanation, this great event of idea, this product of an
8 astute securities lawyer, namely, use nominees and they,
9 meaning the other people in this thing, would avoid detection
10 by using nominees.

11 And then of course, later on in the counts,
12 that is all it says about that, only that Stoller used his
13 wife, mother, mother-in-law, a friend and a neighbor. And,
14 that Allen used his wife, an employee, an associate, Joseph
15 Arden, the wife of Mr. Arden, and a friend as his nominees.

16 As far as Ramon D'Onofrio is concerned, he testi-
17 fied that he used his associates, people known to be his
18 associates.

19 Then, the next theory of any allegation here is
20 on Page 8, subparagraph (o), where it says Mr. Frank furthered
21 this conspiracy by putting his name and a notary stamp on
22 a piece of paper, which has been described either as a bill
23 of sale or receipt.

24 And, the point that was made there, you will
25 recall was, maybe these people didn't show up at his office

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2 when he put his name and notary stamp on it.

3 We will explore that area too, and show where
4 we lay that at rest.

5 So, we have this notarization.

6 Now I want to call your attention to one thing
7 that is very important in this case, and that is that there
8 has been talk here about \$15,000 being paid to Mr. Frank or
9 promised to Mr. Frank or words to that effect.

10 With regard to the indictment, subparagraph (r)
11 of the indictment states, and I now quote, "that Mr. Frank
12 received approximately \$15,000, which was credited in a
13 secret coded account."

14 As to that allegation, and this indictment, the
15 Government consented that it be dismissed and that it be
16 stricken. There is no evidence in this case that Mr. Frank
17 received \$15,000 in his coded account, and I ask you please
18 to disregard if any of that is in your mind, or memory, as
19 the Court itself has found that there is no such proof and
20 dismissed that allegation.

21 End 2B
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2 Now it is said the final means of conspiracy,
3 of the three, was merely that Mr. Frank was promised additional
4 moneys derived from the proceeds of the sale of stock.

5 Where do you get that little tidbit from?
6 Only Mr. D'Onofrio, and the fact of the matter is there is
7 no proof here of any stock being in Mr. Frank's account, if
8 he had any.

9 So as to that alleged means I too ask you to look
10 down the road with me and see if there is that abiding proof
11 beyond a reasonable doubt which will impel you to find sub-
12 stance in that paragraph.

13 Finally, when we come to the overt acts we
14 find, as I said before, only two that I have to deal with.
15 Paragraph 3 says that in November 1968 there was a conversa-
16 tion. That is the conversation about the indication letter,
17 etc., etc. I will talk about that later too in more detail.

18 Then the other one is Paragraph 11. We jump
19 from 3 to 11 before we see Mr. Frank again. Here it merely
20 says that Mr. Frank notarized certain documents with the sense
21 that that notarization was spurious. As to that the evidence
22 will clearly come before you in our analysis to see whether
23 in fact the notarization was spurious.

24 So I have now outlined to you in very broad terms
25 the scope of this indictment and you will hear more from

1 qb-2

2 his Honor, Judge Tyler, as to its scope and the applicable
3 law.

4 But on the factual side and you as the triers of
5 the fact, I ask you to consider what I have said, that as to
6 the means there are only three which relate to Mr. Frank,
7 three out of 21. As to the overt acts, but two out of 14.

8 So you can see now how Mr. Frank is brought in
9 through the alleged right field to come into this situation.

10 Now let us go a little bit further down the
11 road and evaluate each occasion that came before you as to
12 Mr. Frank. Before I do that, may I suggest to you, and
13 won't you try to search your memory as to whether this in
14 your experience has certainly happened, one of the techniques
15 that a liar and a perjurer uses and people who wish to
16 create a web of lies, one of those favorite techniques is
17 to take a thing which cannot be disputed and then weave a
18 story about it.

19 What things cannot be disputed? Government
20 Exhibit 4, that is the first one that can't be disputed.
21 That is the indication letter from Bank Hofmann. So now
22 we have got to weave a story about that.

23 Mr. D'Onofrio is given and takes the laboring
24 ore of saying, "How are we going to weave a story about that
25 which will implicate Mr. Frank?"

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2 Always these hindsight creations. I saw to you
3 that Mr. D'Onofrio motivated by his agreement with the
4 Government, motivated by his money paid to him by the Govern-
5 ment -- and we will hear about that from Mr. Gould --
6 \$31,000 within a period of just over a year paid to this
7 liar by the Government in connection with the testimony
8 that he has given in this case, and I ask you to put the micro-
9 scope to him and test it out.

10 See whether that motivation doesn't bring about a
11 web of lies. It is a web that is woven to entrap the innocent.
12 That is what people do. They take a fact and then they
13 weave a story about it.

14 You have seen it dozens of times. Lo and behold,
15 in this particular case there was a story woven to entrap
16 Mr. Frank. Let's see how that is done. Mr. D'Onofrio and the
17 prosecution start out with facts. Thus, as we say, they
18 have the 1968 letter, Government Exhibit 4 in evidence. The
19 next document attributed to Mr. Frank or with which Mr.
20 Frank has any contact are the so-called bills of sale down
21 in February, the end of February 1969.

22 So you have this big hiatus period, October '68
23 and then to the end of February 1969. Then the other document
24 we have in this case, as you heard about it time and again,
25 was this transcript of the now deceased Mr. Moss. The

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transcript of his testimony under oath before the SEcurities and Exchange Commission.

Finally, from the prosecution, we have a story of how these documents are going to fit into the so-called conspiratorial plan. Let's examine the story. Now we come to the undocumented part of the story where there is no document.

First off, as the prosecution requires, Mr. Frank has got to be known to Mr. D'Onofrio. They have got to know each other. You remember Mr. D'Onofrio's testimony. He said, "I met Mr. Frank in 1967." That is when he met him. But do you recall what Miss Herzfeld said when she was on the stand? She testified that at the end of June, the early part of July 1969, there was a conference in Mr. Frank's office, Mr. D'Onofrio walked into that office and said, "I am Ramon D'Onofrio," and Mr. Frank responded "I am glad to meet you."

Miss Herzfeld testified to this. This is two years after 1967. Why was it important for Mr. D'Onofrio to know Mr. Frank in 1967? The answer is clear. Because this alleged conspiracy took place in June or was created, it had its beginnings, in June of 1968.

One doesn't enter into a conspiracy without at least knowing who the alleged co-conspirators are.

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2 So Mr. D'Onofrio creates the first lie, the very
3 first lie, a lie from this stand. He lied before, as
4 will be abundantly shown to you, but he lied on this stand.
5 He says, "I met Mr. Frank in 1967," and uncontradicted on the
6 record is Miss Herzfeld where Mr. D'Onofrio comes into the
7 room and Mr. Frank says, "I am glad to meet you."

8 Was this a charade? Has there been shown a
9 single impeachment of Miss Herzfeld? As a matter of fact,
10 let me remind you, whose witness is Miss Herzfeld? The
11 Government witness. The Government produced her. Therefore,
12 in effect, the Government vouches for her veracity. But
13 at no time did the prosecution try to contradict her.

14 I ask you to consider that when the 1967 alleged
15 meeting took place it just didn't happen.

16 Now we come to the next point. Mr. D'Onofrio
17 has got to show that Mr. Frank knew about this so-called
18 scheme and plan. You remember that Mr. D'Onofrio said that
19 there was a meeting in the Bau au Lac Hotel on June 8, 9 and
20 10 of 1968. And it was there when Mr. Pfingst was present
21 and Stoller and Allen were present, but not Mr. Frank, where
22 this whole scheme and plan was going to be cooked up.

23 So how do you get knowledge of this cooking up
24 if your Mr. Frank, even though he is not part of the conspiracy
25

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2 and nobody says that he is?

3 The meeting allegedly takes place in his
4 office in September of 1968, and lo and behold, there is
5 now reviewed to Mr. Frank this unholy scheme about Training
6 With the Pros and how stock was going to be blown off,
7 et cetera.

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9 End 3A

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2 You recall to that on the June 8th, 9th and
3 10th meetings Mr. D'Onofrio said Mr. Pfingst was there.
4 We will develop Mr. Pfingst's testimony a little later down
5 the road. It showed he wasn't there and there was no such
6 meeting, and there was no Training With the Pros either that
7 Mr. D'Onofrio says had everything to do with this. There
8 was no such thing. Yet, we have to have knowledge by Mr.
9 Frank so now Mr. D'Onofrio verbally talked, comes forward and
10 puts Mr. Frank at the September 1968 meeting. But even more
11 emphatic is the point that at that time Mr. Frank doesn't
12 become a co-conspirator. He is nothing. He just hears
13 about allegedly what D'Onofrio says.

14 So now the government, the prosecution, says we
15 got him, we are blessed with knowledge by D'Onofrio, the
16 perjurer. Now let us make him part and parcel of the
17 plan, let us make him part of the scheme. How are we going
18 to do that?

19 The government has the indication letter from
20 Bank Hofmann and D'Onofrio says "This is a great instrument,
21 it is a document; now we are going to bring in Mr. Frank."

22 How are we going to do it? We are going to do
23 it by saying Mr. Frank had a meeting at his office and that
24 upon that time and that occasion he said "This letter
25 is no good, it is a bad letter, don't use it. It is no

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2 good. Because if you use it there will be a claim that
3 Bank Hofmann is coming into the situation as an underwriter"
4 or for whatever else.

5 He says, "Mr. Frank says that this letter
6 is no good."

7 Of course, the letter is not destroyed. But
8 Mr. Frank suffers the great nominee idea about there not
9 being more than 1,000 shares allocated to any one person.
10 Do you remember that? This is Mr. Frank's concept, that
11 there not be more than 1,000 shares. I shall show you
12 that this being out of the mouth of D'Onofrio, what did he
13 do with the three people who were going to buy his shares at
14 that time, in December of 1968? Mr. Donofrio by uncontra-
15 dicted evidence -- and here it is. You remember I brought
16 this worthy volume to your attention. We showed that
17 in December of 1968 at page 215 of this book in evidence
18 D'Onofrio had three nominees. He is supposed to get
19 5,000 shares. Who are these three nominees that he has and
20 that appeared on this sheet? He had, as you will recall,
21 a Mr. Bundy -- and excuse me for this interruption. One
22 of his nominees is Paul B. STrauch. Mr. Frank has just told
23 him "You better not have more than 1,000", so Mr. Strauch,
24 on December 13, 1968, D'Onofrio's man, asks for and seeks
25 an indication of how much? 1500. This man acted for

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2 D'Onofrio. He has half again, not 1,000 but 500 more.
3 Now we come down the line a little bit further on this page
4 and we come to Mr. Warren Bundy. Admittedly and concededly
5 by the government and the prosecution he is another nominee
6 of D'Onofrio's. Also on December 13 -- these nominees come
7 in on December 13th, and he indicates for 1200 shares.
8 Of course, that is an observance of the 1,000 share portion.
9 As far as the third nominee of Mr. D'Onofrio she indicates,
10 a Katherine Osborne, she does a real job. She indicates
11 for 1750 shares. 750 shares more than, almost double,
12 than what Mr. Frank allegedly instructed these people to do.
13 Do you believe that? Is D'Onofrio the man who was pushing
14 out this situation and is allocating to Mr. Frank an in-
15 struction which took place in November 1968 and on December 13,
16 a month later, lo and behold Strauch indicates for 1500,
17 Katherine Osborne for 1750 and Warren Bundy for 1200.

18 Therore, I ask you, do you believe this November
19 15th meeting? Do you believe that Mr. D'Onofrio is now
20 listening allegedly to Mr. Frank is going to do just the
21 opposite of what Mr. Frank has told him and instructed him and
22 as to which Mr. Frank becomes a member of this so-called
23 conspiracy?

24 I say to you this is false. This is untrue. This
25 is part of the web that was created here, a verbal story, an

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undocumented story, but when the document comes forward it puts a complete lie to it.

Now let me tell you something else. It is only far down the road that these people, and just before the effective date of the issue, February 1969, that they changed their indications to 1,000 shares. Why was that? You remember Mr. Rich, the former branch chief of the Securities and Exchange Commission, who got on the stand and said that there is a due diligence meeting that the SEC has before the issue comes out and it was his recollection that that due diligence meeting as to Training With the Pros took place in the last week of January 1969, and it was he, Mr. Rich, an official of the government, who laid down the guideline that 1,000 shares, not more than 1,000 shares should be sold to anyone.

This is in January of 1969. How did that come out of the November meeting, particularly when D'Onofrio's own nominees in December of 1968 indicated for more than 1,000?

I say to you again, this is just nonsense. It is whole cloth and it is shown to be whole cloth by responsible people, by Marilyn Herzfeld, by Mr. Rich.

We must go on and look and see where else does this so-called web go forward? In this connection I must point

1 out to you a remarkable coincidence in the testimony
2 brought in by the prosecution, a remarkable coincidence.

3 You remember when Bonavia testified he talked
4 about a grand jury episode where he went before the
5 grand jury in December of 1969 and he said that he made
6 a telephone call to Mr. Frank before he went into the
7 grand jury testimony and then he met with Mr. Frank after
8 he went into the grand jury.
9

10 Why do I bring that out to you? I call that
11 the famous sandwich technique. You have bread on this
12 side, bread on that side and what is in the middle? Let
13 us see. Let us see how it applies the same technique which
14 was used here. Apart from the fact that we do prove that
15 this nominee business is sheer nonsense by documentation
16 by which the government didn't know, because this book,
17 I am sure had the government seen this book D'Onofrio's
18 story would have been a different story. With regard
19 to the next contact, the next contact that Mr. D'Onofrio
20 reports, he says "I had a meeting on February 2nd or about
21 February 2, 1969 in Mr. Frank's office. And Mr. Frank
22 was there and he said how are things going and he reported
23 it is going well and they got 60, 70 or 80 people who are
24 going to buy the stock.

25 That is one side of the sandwich. It is part

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2 of D'Onofrio's structure of lies that he put Mr. Frank on one
3 side of an event and then put him on the other side of the
4 event, on one side of the telephone call to Bonavia prior
5 to his going into the '69 grand jury and then a meeting
6 after he had gone into the grand jury.

7 How did that happen with D'Onofrio? As the
8 meeting February 2nd, allegedly, which I submit to you never
9 happened, and then we have the effective date of the issue
10 which is February 4, 1969.

11 We have to have a continuing contact. He happens
12 to be with him all the way downstream. Frank has got to
13 be woven tonto this thing all the way downstream. I ask
14 you to think about this. You have the February 4th effective
15 date of the issue, he is brought in on February 2nd and then
16 he is brought in again on February 20th, the 21st, in con-
17 nection with the so-called bills of sale and their
18 notarizations. So here you have got the sandwich side again
19 of this proof, a technique repeated by Bonavia and you
20 remember when you think of Bonavia's testimony how close
21 it was to D'Onofrio's, perjury, tampering with evidence, doing
22 all kinds of sordid things and then suddenly the big
23 revelation, the light comes on high and Mr. D'Onofrio
24 comes circling, even though he wrote letters to the
25 Apostolic Mission, he nevertheless became saint, he is now

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2 reforming and his past is over and Mr. Bonavia, he is now
3 reforming and his past is over.

4 It is a remarkable pattern to just run these two
5 side by side and almost their names are interchangeable.

6 But, let us go on. Let me just for the moment
7 go back to the documentation.

8 I emphasize documentation because it is easy
9 for anybody to say that he did something or didn't do some-
10 thing. It is easy to say. But you cannot change the
11 written page. You cannot change a document.

12 Now, let us see about these other fellows, the
13 Stoller and Allen people who also indicated through their
14 nominees.

15 When we look at page 227 of the day book,
16 their indications come in. Mildred Stoller his wife,
17 plain as day, she is allocated, she indicates for 2,000
18 shares but she is only allocated 1,000 shares. That is
19 all.

20 Why did this come about? Because of the
21 guideline that Mr. Rich laid down the last week in January,
22 1969. Not because of anything Mr. Frank said in November.
23 And, when you go down and examine the names of Stoller
24 and Allen's nominees. you will find that they changed their
25 allotments, of getting shares, on February 4, 1969, after the

guideline came down from Mr. Rich.

So please, for example, address yourself to the uncontrovered efforts. Look at the book. Take it into the jury room. Look at page 227. Then, in your heart determine for yourselves whether D'Onofrio lied as to what happened in November 1968.

For example, I stand here before you after these five weeks of trial and upward of 3,000 pages of a record. And, I say to myself, how -- we are lawyers, and we go home at night and get transcripts and read what is there -- here I have totally immersed myself in this record and I report the events to you and nevertheless we are relying upon your recollection as to what happened. So forgive me please if I belabor. I am only doing this to bring up to the surface of your mind a most difficult times after listening for five weeks, some of the critical areas of this case. I belabor these points only because I have freedom at stake here. I have a man's family life, life with his friends, life with his neighbors at stake.

For this reason I belabor the review of these efforts.

Now we come to the so-called situation that took place with regard to Exhibits 21, 22, 23, 24 and 25. They are the so-called receipts and bills of sale.

For example, Mr. D'Onofrio said that these bills of sale were typed in the office of Mr. Frank, when Mr. Frank had dictated this to one of his secretaries in the office.

I ask you, please, take Exhibits 21, 22, 23, 24 and 25 and those of you who have been in business, those of you who have had occasion to see the product of a lawyer, and I ask you to look at those exhibits and you tell me whether this is the product of a lawyer, that those pieces of paper were typed in a lawyers' office. They are crude, there are blank spaces, the language is not lawyer's language. And, I say further that you heard here that there were two sets of documents.

When you look at the two sets of documents you will remember, there was testimony here by Mr. Arden and by Mr. LaMorte, the alleged nominees of Mr. Allen who said they were called upon first to sign a bill of sale which only had the address on it. Nothing else. That is Exhibits O and P in evidence. When you look at the bill of sale, you can see, this isn't the product of a lawyer, either typewriting-wise or otherwise.

Then there was another set of documents that had to be drawn. And, with regard to the other set, Mr. Frank's signature appears, his notarial stamp appears, and otherwise

1 the document in many aspects is is identically or sub-
2 stantially the same. The same kind of typewriter, spaces
3 left. Certainly not anybody of Mr. Frank's claims of se-
4 curities expertise would draw a document like this.
5 Then you have the witnesses who testified as to the purpose
6 of that. Was that false? Was there any hiding here that
7 Mr. Stoller, Mr. D'Onofrio and Mr. Allen were selling their
8 shares to Bank Hofmann? Mr. Frank was not accused of any
9 scheme. Mr. Frank's notarization was put on there, the stamp
10 and signature, according to Mr. LaMorte right in the office
11 of Mr. Frank in Mr. LaMorte's presence. It was put on with
12 respect to Mr. Arden's and his wife right in Mr. Frank's
13 office and the presence of Mr. Frank and the same with
14 respect to Mr. Arden's wife.
15

16 So, ladies and gentlemen of the jury, please,
17 when you examine these exhibits, so-called bills of sale,
18 which are set out as part of a furtherance of a scheme, part
19 of going forward, in this scheme of affair, what was the
20 alleged scheme that was alleged in the indictment? It was
21 that the stock be put in the accounts of Weissinger and Bonavia.
22 There is nothing in there they they couldn't be sold to
23 Bank Hofmann, and, there is nothing in there to dispute the
24 fact that Mr. Frank did nothing more on the second set of
25 documents but to indicate that the person who signed the

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document without regard to its content was the person whose signautre appears, namely, Mr. LaMorte, et cetera.

And you will recall, when Allen's wife was on the stand, remember Allen's wife being on the stand? She testified when shown her signature, lo and behold everybody thought, oh, boy, here we have got Mr. Frank, he never did come to Mr. Frank's office, when loand behold Mrs. Allen -- not Mr. Allen -- Mrs. Allen admits and states she gave Mr. Allen, her husband, power of attorney to sign her signature.

And what did that mean?

That means she authorized him to sign her signature. That came from her mouth, again, a government's witness.

So you see this so-call notarization that appears on these documents, as far as the documents themselves are concerned, we now have to weave a part of the web. Now, I say to you, folks, when you look at this web what do you find?

You look at the cloth, think about the cloth and say to yourself, well, what kind of cloth is this? Is this a cloth of strength and vigor? Now. I say this is a mosquito netting with some holes in it, so many perforations, so many manufactured events that when you

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2 put put the microscope to each single event you find that
3 there is so much that is contradicted by the record and the
4 documents that I must, I ask you, turn aside the stories
5 of Mr. D'Onofrio.

6 Now, we come to the next big event that Mr.
7 D'Onofrio has brought forth. And the next big event, you
8 will recall is in April 1969, where he says at a meeting in
9 Mr. Frank's office, Mr. Frank has claimed to have said
10 he instructed Mr. Stoller, Mr. Allen and Mr. D'Onofrio to
11 see that Government's Exhibit 4, the indication letter of
12 Bank Hofmann was destroyed. Again, if Mr. Frank was so
13 anxious to see that this nominee business was covered up, to
14 see that this indication letter appeared, why would Mr. Frank
15 put his signature on the bill of sale? Why would he adopt
16 the very nominee situation which D'Onofrio claims was
17 set up as an instrument to avoid the action? Why?
18 It just doesn't make sense. Why would he lend himself, to
19 tie himself into this situation? I say to you, when the
20 microscope of reality and truth is brought to bear upon
21 this situation, contradiction is apparent. The
22 unreasonability of it, unreality of it becomes abundantly
23 clear. If he wanted to destroy the letter of indication,
24 if he wanted to hide, how come the letter of indication
25 exists after November 19, 1968, and how come he puts

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2 his signature on pieces of paper with the intent of avoid-
3 ing detection? Ridiculous. I say this too as part of the
4 web and noose that Mr. D'Onofrio weaves and twists and
5 turns because Mr. D'Onofrio has got to earn \$31,000 from the
6 government, because Mr. D'Onofrio's freedom -- and, he is
7 running all over the country, he is in business in California,
8 he flies back and forth from Las Vegas, he gets paid for these
9 things -- that's Mr. D'Onofrio.

10 So, you see the incentive, inducement, money
11 inducement from this kind of gentleman who sat in this chair
12 for four days, this kind of gentleman who had the absolute
13 audacity to claim that he was an agent, secret agent of
14 the Vatican, to claim to write a letter to the Monseigneur
15 in connection with the Apostolic Mission. What kind of man
16 is this? What kind of animal is this, is what I should
17 say? A man who stoops to that kind of chicanery and
18 infamy.

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So, let us now look at the April 1969 meeting where Mr. Frank is alleged to have instructed the three gentlemen here to destroy the letter of indication. And here again, this case is so full of sandwiches, that I used this for my lunch today in analyzing this testimony.

Let's see what happens.

You say, I say this piece of bread on this side, the alleged April 1969 meeting. Then in the middle and part of the sandwich is Mr. Moss going in to the SEC and testifying on May 27, 1969, and I will bring that to bear on this situation; and then, in the early part of July, Mr. D'Onofrio comes forward with another meeting in Mr. Frank's office when Mr. Frank says, "I saw to it that the letter is destroyed."

That is your sandwich. Now, let's see how this comes to pass.

On May 27, 1969, Mr. Moss, unfortunately deceased, testified under oath to the SEC. And, as SEC Exhibit 1, marked in that transcript is what? The indication letter that Mr. Frank in April is alleged to have said, "Destroy that letter."

There it is, plain as day. So, there is no destruction.

Then, when you look at the other bread of the

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2 sandwich, you run down to July of 1969, and because somebody
3 has to account for that letter being in existence, in
4 May, when it was supposed to have been destroyed in April,
5 now D'Onofrio says Mr. Frank said "I have seen to it that
6 it was destroyed."

7 Well, this is some scene, when Marilyn Herzfeld
8 comes forward and says at the end of 1973 I destroyed this
9 letter because I was throwing out papers, and at the behest
10 of no one, at the request of no one, and not at the request
11 of any of the defendants in this case, she destroyed it
12 because it was part of an old file by that time.

13 But, mind you, throughout all of this, the SEC
14 doesn't destroy its copy. So, Mr. Frank, the astute lawyer,
15 is going to say destroy an original when he knows full well
16 that copies exist with the SEC, and elsewhere.

17 Now, for example, I want to bring our microscope
18 a little further along in the analysis of this case. I trust
19 that up to this point I have kind of indicated to you the
20 areas of content this case has as to Mr. Frank and that I
21 have shown you how palpable, how full of holes D'Onofrio's
22 testimony is.

23 Then we come now to something else. Mr. Frank
24 has no stock, nobody says he has stock, no proof of any
25 \$15,000. That count, that part of the count of the indictment

hpb-3

1 dismissed, etc., and time passes. Time passes. 1970,
2 no contact. 1971, no contract. It is not until the end of
3 December 1972 or the beginning of January 1973, when all of
4 a sudden Mr. D'Onofrio now recollects Mr. Frank and his con-
5 tact. So almost three full years pass as to which there
6 is nothing. No contact between Mr. D'Onofrio and Mr. Frank
7 concerning Training With the Pros.
8

9 No evidence of any kind. Zero. No money being
10 made. No stock being sold, just absolutely zero.

11 Now, what happens at the end of 1972, beginning
12 of 1973? D'Onofrio remembers, but he doesn't have a letter
13 that he wrote in January of 1973, a threatening letter about
14 Mr. Stoller and about James Feeney. What is this threatening
15 letter? It says, "You better get Stoller off my back,
16 you got plenty on Feeney, I got this and I got that." Now
17 he has got to develop something about this occasion. So
18 what is it?

19 This is the occasion of the opaque glass door.
20 If you remember, Mr. D'Onofrio testified that at the end of
21 1972 or the beginning of 1973, he was in the office of
22 Mr. Herbert, who was at that particular time engaged in
23 business with him under the firm name of D'Onofrio & Herbert
24 or Herbert & D'Onofrio, and Mr. Stoller and Mr. Frank came
25 into the room and he knowing that they were coming into the

1 room stands on the other side of an opaque glass door and there-
2 by becomes part and parcel of the conference that allegedly
3 is going on.
4

5 And he claims that he hears things. But, you
6 know the surprising thing about Mr. D'Onofrio. He testifies
7 that Mr. Stoller said "I know you are behind that door."
8 Mr. D'Onofrio, he doesn't walk into the room. He is hidden
9 there. He waits for talk to come flying through the transom.
10 That is what Mr. D'Onofrio does. Because he wants to
11 weave about his letter which unfortunately for him doesn't
12 mention Mr. Frank at all.

13 And he says Mr. Frank says I am supposed to get
14 money, I didn't get money, I should have gotten money but
15 didn't, and all that sort of nonsense. Through the transom.

16 Then he goes a step further. This sounds so much
17 like James Bond or the spy stories you see on television.
18 But, to me, I think it was perfectly natural from the
19 man who said I was a CIA agent, I went to Zambia as part of
20 some kind of organization, undercover organization, I was
21 an FBI agent, a secret agent of the Vatican, and now he
22 is behind the opaque door with the open transom, and yet
23 he is known to be there.

24 For example, how much incredulity does he think
25 we have got to spend on this kind of nonsense? Does he

1 really take us to be fools? Are we really in a position
2 where he has to manufacture opaque doors and open transoms?
3 And, is it necessary, is it necessary in this case to
4 create this kind of cloak and dagger sort of thing? Was it
5 necessary? Couldn't the conversation, just as factual and less
6 dramatic be, if it took place somewhere else? Well, the
7 reason he makes it dramatic is because that is the kind
8 of man he is. He is a liar, exaggerates, distorts and he
9 wants to impress. That is why he talked about the qualifica-
10 tions as a graduate law student or lawyer from the Blackstone
11 Law School, which is merely a correspondence school. That
12 is why he claimed he was a member, together with others,
13 members of the New York Stock Exchange, when the nearest he
14 got to a Stock Exchange was to be a manufacturer of deals,
15 deals that put money into his pocket, deals as to which he
16 had the most unscrupulous, I said most unscrupulous tactics.
17 This is the man who you are to believe beyond a reasonable
18 doubt, beyond a reasonable doubt.
19

End 4B

TK 5A

cb-1

1 This is Exhibit G in evidence, and very short.
2
3 It starts out, "Client-counsel confidence," a man who knows
4 his way around, sophisticated. "For the final and last
5 time you tell Phil I have dozens of original documents,
6 including handwritten letters on Fleetwood and other names,
7 familiar to all. You would be doing me a favor by aggrava-
8 ting me further. I also know you talked to Feeney, tell
9 him for me I will buy" -- and I won't use the word. I am
10 sick and tired of hearing epithetical words in this court-
11 room. Bob Morvillo's offer, Bob Morvillo is the chief
12 assistant, chief of the criminal division of the United
13 States Attorney's office, "Bob Morvillo's offer sounds
14 juicier to me."

15 Not one word about Mr. Frank. There is not one
16 word about Mr. Frank or \$40,000 for getting the stock, not
17 getting the stock, not getting paid 15,000, nothing.

18 This letter you can see on the stamped postcard
19 in the reverse side, it was written at the beginning of
20 1973.

21 Folks, that brings you to the end of the scenario
22 of Mr. D'Onofrio. There is nothing more to say. He
23 has nothing more to say about contacts.

24 Before I pass from Mr. D'Onofrio to others, and
25 I ask your patience again, please, I want to just bring

1 one or two things to light. It is claimed that in the
2 1969 July meeting that Mr. Frank castigated Mr. Stoller
3 for testifying before the SEC without an attorney, and
4 that it was at that time, July 1969, where D'Onofrio, the
5 architect of this stupendous plan, utterly inventive concept
6 of nominees and things of that nature, says that under
7 duress I shall force Training With the Pros to repay Mr.
8 Frank. That is July of 1969.

9
10 Is that true? For example, is that story true?
11 That he, under duress, is going to force Mr. Moss to retain
12 Mr. Frank, a securities lawyer, because Stoller at the
13 end of June went in and testified to the SEC without an
14 attorney. Is it true? At that meeting too you had this
15 so-called indication letter being destroyed.

16 Is that true? It is a lie. It is a lie for
17 many reasons. The first reason, again, documents. Mr.
18 D'Onofrio didn't know we had this document. This is a
19 document dated May 29, 1969, not July 1969, not June of 1969,
20 but May 29, two days after Mr. Moss had testified under
21 oath. This is Frank Exhibit H and it is on the stationery
22 of Training With the Pros. It says, "Dear Mr. Frank,
23 you are hereby authorized to act as attorney on behalf of
24 Training with the Pros, Inc., an investigation now being
25 conducted of it by the Securities and Exchange Commission."

1 gb-3

2 It is a piece of paper uncontradicted, testified
3 to by Miss Herzfeld as to its authenticity. I ask you
4 folks, is D'Onofrio a liar? Is D'Onofrio to be believed
5 beyond a reasonable doubt as to Mr. Frank being retained in
6 July of 1969 because he was under duress?

7 Is this true in the face of this plain document?
8 Let's go a step further. Again, Frank Exhibit Q is evidence,
9 and this is dated May 28, 1969. Again we come to this
10 July business of D'Onofrio. I say to you when you read
11 documents of this kind and you listen to a man's testimony,
12 and I will agree with you that during the greater portion
13 of this trial I did not throughout take a strong and affirma-
14 tive and active part because I say to you that the vast
15 majority of this evidence is not binding on Mr. Frank and
16 nothing to do with him.

17 The vast portions of the indictment have nothing
18 to do with Mr. Frank. Is he being pulled in? Is he being
19 dragged in by a web of lies? What does this say? This is
20 a memorandum not by anyone from Training With the Pros,
21 but a memorandum by the SEC. May 28, 1969 from Bruce A.
22 Rich, the same gentleman who testified and gave the guide-
23 lines of January of 1969 about the thousand shares. He
24 says in substance here that on May 22, 1969, at approximately
25 5:00 P.M. Mr. Frank called me to ask me questions about

Training With the Pros, Frank said he has spoken with some persons connected with the Training With the Pros, who said they were requested by the Commission.

Frank asked whether we had a formal order, so on and so on. There is a lot of other stuff all about Training With the Pros. You take this and you take the retainer letter and I ask you, the two documents, who retained Mr. Frank?

When was he retained? Was he retained under duress in July? Was he retained at a meeting where he says I will see to it that Exhibit 4, that indication letter, will be destroyed.

Can you take these documents into the jury room and believe, sir, that this is true, the writing, or is it D'Onofrio's talk?

What is the background of all of this that I have just shown you? You heard Miss Herzfeld testify that Mr. Moss was unhappy about his representation by a lawyer by the name of Mr. Bart before the SEC on May 22nd. It was he, Mr. Moss, who was the president of Training With the Pros, who said, "I want a different attorney, one experience in SEC matters."

Miss Herzfeld gave you that testimony. D'Onofrio had nothing to do with that. This came out of the mouth of

1 gb-5

2 Miss Hartzfeld. Where does this gentleman, this D'Onofrio,
3 get the audacity to lie on this stand, and I say he lied
4 to you.

5 Thank God we have these documents after so many
6 years to prove that he lied.

7 For example, I want to go on. With your kind
8 permission I would like to talk about Mr. Bonavia. That is
9 going to be very short, indeed, because Mr. Bonavia has
10 very little to say about Mr. Frank. You will recall that
11 the first thing that strikes you about Mr. Bonavia's
12 testimony is that he has a deal. He has got a deal with the
13 Government. Can't we have a witness without a deal? Do
14 we have to have in this trial, the center point of the trial,
15 the people who can only come to you and say, "believe my
16 testimony or not believe it," both of whom have deals. What
17 is this? Do you go down the street and you say to some-
18 body, "Look, I will pay you if you say something?" When you
19 read these deals what in effect do they say? I will do this
20 if you will do that for me. I will see -- in Bonavia's
21 situation -- that you won't be prosecuted for income tax
22 evasion. That is right in Mr. Sorokin's letter. If you
23 are willing to continue your cooperation, willing to continue
24 your cooperation -- who is going to determine whether there
25 is willingness to continue cooperation?

qb-6

1 Not Bonavia. That is going to be determined
2 by the prosecutor, the willingness to cooperate. When
3 you have that background and you have that context of
4 what is going on, let's see what happens.

5 In 1967, of course, Mr. Bonavia doesn't know
6 Mr. Frank. He doesn't know him at all. In 1968, he doesn't
7 know him. He never knew him. He never had any contacts
8 with him. That is when you know the so-called beginnings
9 of the crime here.

10 In 1969 on the effective day, February 4, he
11 doesn't know Mr. Frank. The so-called April of 1969 meeting,
12 Mr. Frank's office where he is instructing people to destroy
13 letters, he doesn't know Mr. Frank.

14 Right from that whole series of events he doesn't
15 know Mr. Frank. But somehow if he is going to testify in
16 this case he better know him. If Mr. Frank is going to
17 be dragged in he better know him. So what happens?

18 Ladies and gentlemen, what happens? Out of the
19 blue we hear about the telephone conversation. Mind you,
20 in 1969, Mr. Bonavia is screaming, according to him, "I
21 don't want that TWP stock in my account," he is yelling at
22 the top of his voice. When he is on there answering ques-
23 tions he said that the only thing I didn't want, I didn't
24 want that stock in my account.

25

1. qb-7

2 I don't know about anything else being wrong,
3 I just don't want it. I didn't want it in my account.

4 Then all of a sudden in December of 1969, when
5 he gets subpoenaed to the grand jury to testify about some-
6 thing unrelated to this case, nothing to do with this case,
7 lo and behold, you get a telephone conference, after Mr.
8 Stoller allegedly gets Mr. Frank on the phone, Mr. Bonavia
9 gets on the telephone on that end and he reports a story
10 to you about taking the Fifth Amendment. And so on and so
11 forth.

12 Mr. Frank says take the Fifth Amendment, don't
13 testify about this and don't testify about that and, you
14 know, the funny thing is that this man sounded so innocent
15 about these things, about taking the Fifth Amendment, as
16 if this was the first time in his own life that he ever heard
17 about the Fifth Amendment, about the right -- and I say it
18 is almost a God-given right under our constitution to
19 assert a Fifth Amendment privilege.

End 5A 20

21

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jgbr 1

t5b pm

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2 But when he takes that position, as it ap-
3 peared to me that this was an innocent, he said "No, I
4 would rather go in and ot take the Fifth Amendment,
5 I would rather lie than take the Fifth Amendment," as
6 if he had never done it before. But the fact is, and the
7 proof came out, that he had testified before and he had
8 taken the Fifth Amendment and declined to answer and in this
9 very grand jury session, December 1969, he did take the
10 Fifth Amendment as to certain questions. So I say to you,
11 for example, now we have this telephone conversation.
12 Then he comes to Mr. Frank's office after that, again
13 the sandwich stuff, remember? You got a telephone conver-
14 sation and then the event and then a conference, always
15 boxed in that way. And then comes the fact that he has
16 this conference at the office and he reports what he said
17 but the fact remains that in the testimony it is before the
18 grand jury I recall my asking questions "Didn't the prosecutor
19 ask you questions about Training With the Pros at this
20 December 1969 episode?"

21 "Yes, he did." Lo and behold when I asked him
22 to show me where in the testimony he was asked questions
23 about Training With the Pros the prosecutor got up and
24 said "I concede that nowhere in that record is Training
25 With the Pros mentioned." He concedes that. Again I say

1 John 2

2 to you, for example, another sandwich that we have to
3 toss around.

4 Now Mr. Bonavia who is screaming about being taken
5 in Training With the Pros and endeavoring to web in and lock
6 in Mr. Frank, what is the real thing that tests his honesty
7 and truth to the test?

8 You will recall that Mr. Bonavia during the course
9 of my cross examination made mention of the fact that he had
10 not seen Mr. Frank in 1970, that it wasn't until the fall
11 of 1971 that he saw Mr. Frank and where did he see him,
12 and what was the occasion for him to see him? Was it an
13 occasion that had to do with Training With the Pros where
14 he is screaming about to sue and he didn't get his money, you
15 got my money and you have my stock in the account? Not
16 at all. Isn't this a strange way for a man to act? He
17 comes into the office and he sees me and I haven't met
18 Mr. Bonavia ever and he thanks me for writing a letter of
19 recommendation for his son who went to law school.

20 And he sees Mr. Frank and he testifies that
21 it was a very casual event and no discussion about Training
22 With the Pros, and this is a man screaming about the fact
23 that he was taken on it. Does that mean anything to you
24 about Mr. Frank not being part and parcel with Training
25 With the Pros, if he had an experience with Training

1 jabr 3

2 With the Pros? I say to you, if you and I were in
3 that situation and we came in to a man who we thought was
4 part and parcel of the plan to take some \$400,000 out of my
5 pocket, I wouldn't just be saying "Hello, how are you" and
6 saying to his law partner, "Please recommend my son for law
7 school," and saying to his law partner, "Thank you very much
8 for recommending my son to law school."

9 I just didn't see it. I tried to see it.
10 I tried to stomach some of that testimony and it just
11 wouldn't stay down because it is not so.

12 I ask you to consider these episodes and look
13 at it in the light of truth.

14 I do want to get on to another area. That is
15 the area of Mr. Pfingst.

16 Folks, you, each of you, are the persons in whom
17 our system of American jurisprudence, our system of justice
18 reposes the faith and confidence. Based upon your own
19 experience, your own worldly experience, to recognize fact
20 on the one hand and documentation and stories and fiction
21 fantasy on the other hand. Spawn those fictions, stories and
22 fantasies out of selfish desires, out of self-seeking and of
23 infamy. I rest with you with the full confidence, I rest
24 with you in the belief, in the strongest sense that I have
25 travelled the road of these facts and have come to you

1 jabr
2 and asked you to weigh them with me. Now it may well be
3 that in the course of my discourse with you, of our relation-
4 ship, it may well be that there are episodes that may have
5 passed out of my mind that I entrust to you. It may well be
6 that there are other events which fortify in your minds and
7 in your impressions and in your reactions the absolute and
8 firm recognition that D'Onofrio is a liar, that Bonavia
9 is a liar and that they lied here about Mr. Frank.

10 But now we come to Mr. Pfingst.

11 You have heard no testimony here that Mr. Pfingst
12 had any contact with Mr. Frank or knew Mr. Frank and yet
13 he came here and he testified under oath. You evaluated
14 him, you saw him. You determine, is this man telling the
15 truth? Has he got an ax to grind at this stage with
16 anybody? Has he got a reward that he received for testifying?
17 Is there none of that. There is none of that at all. To
18 the contrary, when you consider Mr. Pfingst on the one hand
19 and measure him against the stories of D'Onofrio, well, I
20 must quote what I had to interpolate, I had to move this
21 in. "It was from the bars and dance halls of Zanzibar".
22 I wrote this little piece myself. I thought it rhymed.
23 I am not so sure it does, but my poetic instincts got me.
24 "From the bars and dance halls of Zanzibar to a one room
25 residence in Las Vegas there goes Mr. D'Onofrio, the

1 jobr 5

2 man of perfidy." Compare him with Mr. Pfingst. Mr. Pfingst
3 was straightforward. He answered questions sharply. What
4 did he testify to? That there was no meeting in June of
5 1968 about Training With the Pros. He never heard of it
6 at that time. That sure he did go to Europe with
7 D'Onofrio but it had nothing to do with Training With the
8 Pros. That he did go to Europe in August of 1968 and
9 again it had nothing to do with Training With the Pros. That
10 he did go to Europe in September or again the latter part
11 of August and again it had nothing to do with Training
12 With the Pros.

13 But the clincher was this: D'Onofrio said,
14 "The man who drafted on a yellow piece of paper the letter
15 of indication, Government Exhibit 4, that man was
16 Mr. Pfingst."

17 Mr. Pfingst said "That is not true. I never
18 saw, I never drafted, I never knew about this letter."

19 Mr. Pfingst did not carry through the offering
20 but he was the attorney right straight down through December
21 of 1968 and he never knew or heard of this indication letter.
22 So who created the indication letter? Not Mr. Pfingst.

23 Now, we have one other thing that strikes me.
24 Mr. Pfingst testified that he was fully available in this
25 city for a period of five years. In May 1973 you remember

1 jgbr 6
2 that D'Onofrio came forward, he returns to the United
3 States, he makes his deal with the government and
4 he talks about this whole episode and he puts Mr.
5 Pfingst right in the middle.

6 How come Mr. Pfingst wasn't called upon
7 by the prosecutor to deliver his version of the facts?
8 Why was it left to the defendant, to Mr. Gould, to the
9 defendant Stoller to give this defense and have him
10 testify as to what happened?
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1 hehr 1

26a pm

2 Why was it necessary in those circumstances
3 where there was full availability, why was it necessary
4 for the defendant to come forward and say Mr. Pfingst,
5 give me your version of what happened in June 1962, give me
6 your version of whether there was then a beginning of a
7 conspiracy, give me your version of what happened in the Baur
8 au Lac hotel where Mr. D'Onofrio remembers it was under a
9 California tree, and he remembers -- do you remember what
10 he said about Mr. Pfingst? Mr. Pfingst had Perrier and
11 water. Mr. Pfingst said that is all nonsense, untrue, that
12 he never used Heckel & Jeckel and all that sort of
13 episodic, stupid language. For a moment I didn't know where
14 we were. I thought we were at some Mickey Mouse picture,
15 the Heckel & Jeckel business.

16 Now again, ladies and gentlemen, I have come to
17 the end of this scenario. I believe I have discussed with
18 you all the contacts that are claimed to involve Mr. Frank.
19 I wish to say to you that it is difficult for me within the
20 boundaries of proper language, of language that should have
21 a place in this hall of justice, to tolerate and to accept
22 without a feeling of uttermost distaste and revulsion the
23 things that came off this witness stand from D'Onofrio and
24 D'Onofrio. I just can't help it. My experience has been
25 through many trials but never have I had the experience

1 hpbr 2

2 where I had two Sicilian twins coming before you and saying
3 to you, we lied, perjured, did this and that and we were
4 the instruments of infamy.

5 Where then, ladies and gentlemen, where then is
6 your sense of justice, where is my sense of justice? Where
7 then are we going to look and place our vision upon what has
8 happened here in these past five weeks?

9 There was a great man by the name of Benjamin
10 Disraeli, once prime minister of England and he very
11 succinctly stated stated, he said "Justice is truth in
12 action."

13 And I ask you, did you see truth coming off
14 this stand? Did you? Did you hear?

15 When we look to these things and we find what
16 happened here, we wonder, we wonder why these things came
17 about. We wonder why when Pfingst wasn't called about
18 the beginning of this so-called conspiracy. Why? And
19 I say to you, if you believe Mr. Pfingst, that he never
20 met with Stoller or Allen, or D'Onofrio in June 8, 9,
21 and 10 -- notice these dates set forth by D'Onofrio -- to
22 create and discuss a conspiracy, I am sure you will get this
23 instruction, and I ask you to believe Mr. Pfingst, you
24 must acquit these defendants because then there is no
25 conspiracy beyond a reasonable doubt, and there is no

1 hphr 3

2 genesis, no beginning to any conspiracy. If you believe,
3 and I say to you, you cannot do otherwise, Miss Herzfeld,
4 no reason to lie, no benefit, then there was no destruction
5 of any indication letter; there was no employment, retainer
6 of Mr. Frank. There was just sheer absolute make believe
7 construction by D'Onofrio. If you look at the Bonavia
8 situation, there are days and days and days of testimony,
9 Bonavia has this size of capsule with respect to Mr. Frank
10 and then to come in to our offices without even a word of
11 reproach, without even a statement to me about so-called
12 claimed involvement of Mr. Frank.

13 You know, folks, Mr. Frank and me, I leave
14 this in your hand. It has been said that justice is the
15 unchanging law of God. Justice is the unchanging law of God.
16 And, justice is the principle upon which our democracy was
17 founded. I urge you to consider, and I submit to you with the
18 full confidence that justice requires, in fact justice
19 demands that you return in this case, after your deliber-
20 ation, a verdict of acquittal for Mr. Frank. Nowhere in
21 this case, I respectfully submit to you, can you be without
22 a reasonable doubt. I say again that such a verdict of
23 acquittal as to Mr. Frank is the only verdict in this case,
24 and is the only thing that squares upon and sits upon the
25 head of justice. My last caution is that if you believe,

1 hphr 4

2 , and I say you cannot help but believe, that Herzfeld, Mrs.
3 Herzfeld in July 1969, introduced D'Onofrio to Mr. Frank, in
4 Mr. Frank's office, and that was their first meeting, then
5 I say to you that you have a right to infer, and you should
6 infer that Mr. Frank had no part in any conspiracy anywhere
7 with respect to Training With the Pros.

8 Finally, Madam Forelady, ladies and gentlemen,
9 this has been a miserable and mean case. It has been
10 fraught with language we do not use in our homes. On
11 Mr. Frank's behalf and on my own behalf, I thank you.

12 Thankyou, sir.

13 THE COURT: Ladies and gentlemen, since it is
14 now twenty to four, we will suspend rather than start another
15 closing argument, and tomorrow we will hear of course from
16 Mr. Gould, from Mr. Stoller and Mr. Sorkin for the pros.
17 Perhaps we can come to the Judge's charge too, but I think
18 I better leave that and see what happens. Let me put it
19 this way: At the very least I am confident that I can
20 give you the charge and commit the case to you the very
21 latest on Wednesday morning. Possibly I can do it tomorrow
22 afternoon. It depends of course on how long Messrs. Gould
23 and Sorkin take. That will give you an idea. I want
24 to thank you especially for coming in on this holiday,
25 it has helped immeasurably. Let me say no more.

1 Exbr 5

2 I will see you tomorrow at 9:30.

3 (The jury left the courtroom.)

4 THE COURT: Mr. Sorkin, first of all, what
5 I will call your supplemental request for charge, you
6 numbered it No. 55.

7 MR. SORKIN: Yes, your Honor.

8 THE COURT: I see no point in giving this
9 instruction unless the issue comes up in summation. It didn't
10 in Mr. Feldshuh's summation and I rather doubt it will
11 come up in Mr. Gould's. In other words, no one is accusing
12 you of failing or refusing to take the stand. Therefore,
13 I see no point in getting into it even though from a legal
14 point of view it is an undeniable proposition of law for
15 whatever it is worth. Do you know what I am talking
16 about, gentlemen?

17 MR. GOULD: I know, your Honor, but I don't
18 want to commit at this moment the fact that I will not
19 comment on that.

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1 hbb-1

2 THE COURT: I don't care. I will leave it
3 up to you.

4 MR. GOULD: If I do, and if an instruction is
5 appropriate, I disagree with Mr. Sorkin as to the law.
6 It is of course true that as a general proposition a
7 lawyer trying the case should avoid trying to testify in the
8 case. It is just as much a proposition of law and it is,
9 I think in the Canon of Ethics, when an attack is made on a
10 lawyer trying the case so that his own testimony is necessary
11 in the case, it is his duty to step down as trial counsel
12 and obtain another attorney to take over so that he can
13 testify.

14 THE COURT: We will argue about that later.

15 All I am saying is, as matters now stand, I
16 do not propose to get into another issue because I don't know
17 that it is necessary. I don't mean to inhibit you and I
18 don't mean to inhibit Mr. Sorkin.

19 MR. GOULD: My only point is, if it does come
20 up, we would like to give your Honor what we think is a
21 clear expression of the law. This certainly is not it.

22 THE COURT: Fair enough. Well, it is part of it.

23 MR. GOULD: Yes, indeed, it is part of it.

24 THE COURT: As regards your requests, Mr. Gould,
25 on behalf of the defendant Stoller, I have no quarrel in

1 substance with any of this except for No. 15. I would
2 like the Government to comment on that. That may be an
3 appropriate charge, but I want the Government to look at
4 this because apparently the Government takes a different view.
5

6 I am not sure about this, but that is the
7 inclination I get.

8 MR. SORVIN: Your Honor, I have looked at
9 No. 15, and I thought we had hammered out this issue. It
10 is our position we are dealing with quite another statute here.
11 The Supreme Court dealt with Section 1621 of Title 18. I
12 think in Bronson it said literally truthful but non-
13 responsive answers are not grounds for perjury. Here,
14 Section 1001 is much broader, and it says false fictitious
15 or fraudulent misrepresentations, and the Supreme Court
16 case of Gilliland has said if the witness is creating in
17 the fact-finder a misapprehension and of course wilfully
18 and knowing and so on, that it is a violation of --

19 THE COURT: Yes, but this doesn't really answer
20 the point. That is why I want you to focus on this
21 again. As far as this request goes, I am not persuaded that
22 it is correct. It may not go the whole way, I understand
23 that.

24 MR. GOULD: Wouldn't your Honor concede to me
25 if the Government is going to stand on a position the

1 answer is misleading, the very least they have to do is
2 bring in the fact-finder, the man misled and have him explain
3 what it was they were trying to do and give --

4 THE COURT: I am not going to argue with you.
5 I have said maybe as far as this goes it is all right,
6 but I am trying to flag it for the Government. I just
7 don't think that you are sure of what is being said here,
8 so I want to give you a chance to think about it over
9 the evening.

10 Now, Number 18 is perfectly fine, but I am frank
11 to say it goes on for so long, I think in fairness perhaps
12 to Mr. Sorkin I will say I am not going to charge that.

13 Certainly I am going to cover the points which
14 I think are covered here, but since I am not sure what
15 was intended there I better say I will not charge 18, so
16 that you have an exception.

17 Now --

18 MR. SORKIN: Your Honor, can I direct my
19 attention to No. 7?

20 THE COURT: Yes, you may, but just let me finish
21 here. Number 30, I am not going to give in my main
22 charge. I see you purport to charge some razzle-dazzle
23 remarks of mine in United States vs. Abrams. If my memory
24 serves me, we didn't come into that until the so-called
25

bpb-4

1 Alan charge, three days after deliberation.

2 MR. GOULD: I think we can deal with that if
3 we get to that stage.

4 THE COURT: I am a great believer in not anticipat-
5 ing --

6 MR. GOULD: I concur, your Honor. I think it
7 is premature to have that sort of thing.

8 THE COURT: Now what is your problem with No. 7?

9 MR. SORNIN: Your Honor, I don't think that
10 is an accurate reflection of the law that there must be
11 a stake in the venture.

12 THE COURT: Conspiracy, I beg your pardon.
13 That is right, I am not going to charge that.

14 MR. GOULD: There has to be something more than
15 mere knowledge, approval or acquiescence.

16 THE COURT: I agree with that, but I am not
17 going to charge what you said. I only have to deal with
18 what I see here. There must be something more than mere
19 knowledge.
20

21 End 6B
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2 MR. GOULD: Your Honor accepts the first part
3 of it?

4 THE COURT: Yes. Again, perhaps it is the
5 way I view these matters, but trying to look at this in
6 totality, I am not going to charge certainly the second
7 sentence. What I will charge is something that I think
8 is much more helpful from the defendant's point of view,
9 namely that he must know what was going on and that
10 he was consciously interested in participating in a scheme
11 the objects of which were blah, blah, blah and blah blah.

12 MR. GOULD: And did something in furtherance
13 of it. That is certainly required.

14 MR. SORKIN: If I may, directing my attention
15 to No. 28, the testimony of informers, I think there is
16 a charge we use, the testimony of accomplices should be
17 weighed carefully and not the testimony of informers.

18 THE COURT: I treated it as an accomplice, although
19 frankly I think this is a perfectly good point. The defense
20 calls D'Onofrio an informer for reasons of tactics at
21 least. The point is the same.

22 I am going to have to tell them this about
23 D'Onofrio in spades even if they didn't ask me to.

24 MR. SORKIN: I understand that.

25 THE COURT: None of this is my language. I have

1 my own style, for better or worse. The point made in
2 No. 23 is perfectly valid.

3 MR. SORKIN: No. 27, as well, the testimony of
4 a perjurer. It is my recollection that we refrain from
5 using the term "perjury" here.

6 THE COURT: I don't like it either. Perjury
7 in my opinion is a word of law and it is not a word of fact
8 unless one has been a convicted perjurer.

9 MR. GOULD: I would accept an amendment.

10 THE COURT: The main point is, and I made it
11 clear I am not bound by the exact language of counsel in
12 these matters, the substantive point as I read 27 is correct.
13 Somebody who is an accomplice and who is an informer or
14 whatever, if he has admitted to certain lies, which D'Onofrio
15 certainly admitted to, for that reason alone his
16 testimony ought to be regarded with care.

17 MR. SORKIN: I think that is the standard
18 charge.

19 THE COURT: What they did here was the bifurcated
20 what I consider essentially the same subject. That is all
21 right. They are entitled to put it that way if they want.
22 Again, I will give the same charge I gave in this context
23 which is most of the time, in any event, as you well know or
24 should know.

1 It is very rare these days when we don't have an
2 informer and an accomplice both.

3 MR. SORKIN: Let me direct my attention to
4 Request No. 22, "good faith, belief of the truth of statements."
5 I have never heard of any charge along those lines, asking
6 the jury to acquit even if they find the defendants believed
7 in the goodness of the company.

8 THE COURT: You are quite right. I miss the
9 point there. What I will charge is that if all the evidence
10 shows that the defendants merely made certain statements
11 which they had every reason to believe were substantially
12 correct and that is all that happened, then they shouldn't
13 be convicted.

14 MR. GOULD: That is what we meant. It is not
15 too artfully expressed.

16 THE COURT: I am glad you caught that, Mr.
17 Sorkin. You are quite right, I won't charge that.

18 MR. SORKIN: I am also concerned about Request
19 No. 21. Again, it is phrased in the language of "I
20 should say the manipulation, 17A2 and 1085-2 and false state-
21 ments and misrepresentations."

22 It is our position now, as it has been all along
23 that this was more than that, 17A1 and 17A3, that there
24 was a scheme. Even if there was no misrepresentation of
25

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2 a fact to any of the brokers there were omissions here.
3 Even if there weren't omissions there was a scheme going
4 on. This narrows clearly the broad language of 103 --

5 THE COURT: Again, you are quite right about
6 that. I don't regard this as a declaration case either,
7 although I suppose to an extent it is if you accept your
8 view that the price of Training With the Pros was artific-
9 ially enhanced by the maneuvers of the so-called nominee
10 accounts and the business with Bank Hofmann and the business
11 with Weissinger and Bonavia, etc.

12 I think mainly it is a deception case by failing
13 to reveal what was going on. The point I think the
14 defense makes here is a good one, or the defendant Stoller
15 makes. That is this: The jury will have to be satisfied
16 in the spring of '69, April and May, the time we know
17 that the Eliners, as you put it, Walter Paruch and Elinor Wein
18 and all these marvelous people -- who was the fellow everybody
19 forgets in this case?

20 MR. SORKIN: Schneiderman. He is back in February.
21 He is a market maker.

22 THE COURT: That is right. He was an interesting
23 witness though.

24 MR. SORKIN: I didn't call him, your Honor.

25 THE COURT: You better read his testimony.

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I would think if I were you I would like
his testimony.

MR. GOULD: So do I, especially the cross.

THE COURT: There is always a nugget here and
there.

MR. SORKIN: I like his testimony, your Honor.

End 7A

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2 THE COURT: What I am trying to say is
3 Steller's point of Mr. Gould's point is a good one. Namely
4 at the very least in April and May there should have been
5 some concealment, as you would put it.

6 MR. SORKIN: I don't argue with that.

7 THE COURT: Or there should be facts indicating
8 to their satisfaction that there was a scheme, an artifice
9 as you allege. This is also fraught with difficulties
10 of language that I fail to make that point. But I am
11 not going to use the language for example "There were no
12 misrepresentations or false statements" and then let it go
13 at that. That is for now.

14 MR. SORKIN: Your Honor was directing his
15 attention to either the lengthy request No. 18 or the lengthy
16 request No. 17 and I don't remember which.

17 THE COURT: 18.

18 MR. SORKIN: Let us move back to 17. Again
19 I think that goes on and on and again it deals with these
20 omissions and I just don't think it is a proper charge.

21 MR. GOULD: I understand Mr. Sorkin's concern
22 about my prolixity and I am very sorry about it but
23 I don't know any other way that you can do this and tie
24 together the instructions of all the cases as to what you
25 are supposed to do with this sort of thing. This just

1 page 2

2 represents our own dissent to state for your Honor --

3 THE COURT: I accept it as such. I am going to
4 try to condense this point on those points. I should say,
5 a great deal more.

6 But I took it in that vein.

7 MR. GOULD: That is all there is. I know what
8 the problem is on that.

9 THE COURT: All right.

10 MR. SORKIN: On No. 14, your Honor. I think
11 there are four elements to the false statements charge,
12 1961. They have 3 and I disagree with No. 4, the fourth
13 element there. I think this circuit has held in I think
14 it is the Marchisio case that materiality is not an
15 element of Section 1961.

16 MR. GOULD: If it is not it is unconstitutional.
17 It has been assured to suggest that materiality is not
18 an element.

19 MR. SORKIN: I just ask the Court to please take
20 a look at that particular case.

21 THE COURT: Fine. What is the citation?

22 MR. GOULD: It says a material fact. I didn't
23 make that up. That is in the statute and it would be
24 unconstitutional if it weren't there.

25 THE COURT: Even if it weren't in the statute

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2 I don't see how the courts would ever have been indicting and
3 convicting people --

4 MR. GOULD: For making jokes and having them
5 turn out false.

6 THE COURT: If that were the standards
7 the whole clutch of us would be in some kind of terrible
8 gale right now.

9 MR. GOULD: Certainly no. I don't know about
10 Sorkin but I would be in the jail house.

11 MR. SORKIN: I would like to call it up to
12 chambers.

13 THE COURT: I should think so. May I impress
14 upon you to keep in mind that I think Mr. Gould is clearly
15 right.

16 MR. SORKIN: Here it is, your Honor. United
17 States v. Marchisio, 344 Fed. 2d 633 at 666 Second Circuit
18 1965.

19 THE COURT: I will read it. I just point out
20 to you what 1001 says. Court's don't ordinarily admit
21 of their way to ignore this, "knowingly and wilfully
22 falsifies, conceals or covers up by any trick, scheme or
23 device a material fact".

24 MR. SORKIN: We are dickering about words, your
25 Honor.

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2 If your Honor will look at the next paragraph
3 "or makes any false, fictitious or fraudulent statement
4 or representation knowing the same to contain any false,
5 fictitious or fraudulent statement." I think that clearly
6 says the materiality is thought essential to the second part
7 of 1001. I ask your Honor to look at the case.

8 THE COURT: Very well. I will look at it but
9 I rather think that that is taking a rather peculiar reading
10 of the statute but as I have promised, I will look at it.

11 MR. COULD: What time are we on tomorrow?

12 THE COURT: 9:30.

13 Be in good voice.

14 (Adjourned to Tuesday, October 15, 1974,

15 at 9:30 a.m.)
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WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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Thomas Donnan	3061	3066		

